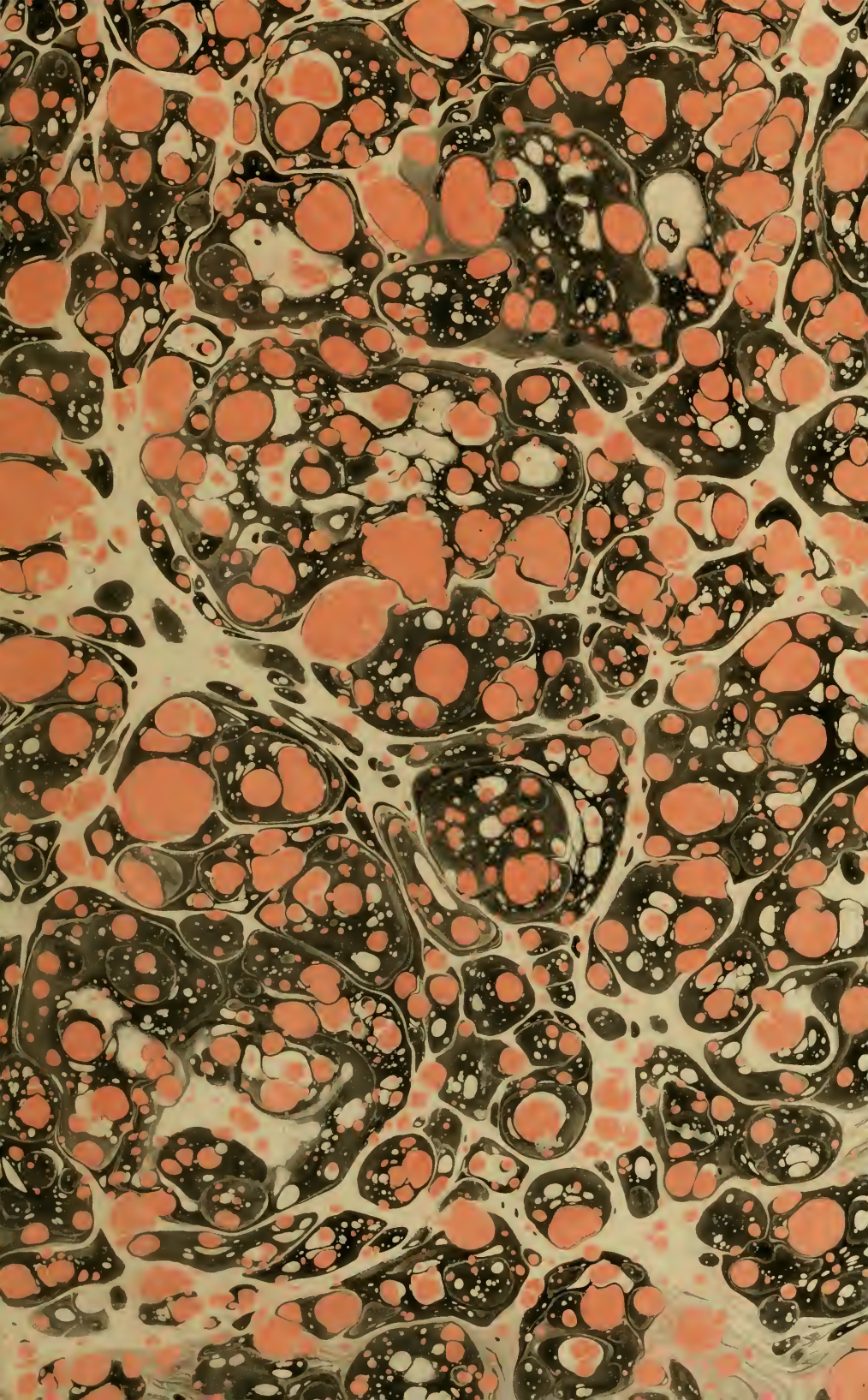

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A

PRIZE DISSERTATION,

ON THE

EXCELLENCE

OF THE

BRITISH CONSTITUTION.

BY

GEORGE SKENE KEITH, A. M.

MINISTER OF *KEITH-HALL* AND *KINKELL*.

Aberdeen:

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ADVERTISEMENT.

MRS. BLACKWELL, *Widow of the late* DR. THOMAS BLACKWELL, *Principal of Mariſchal College Univerſity, left* TEN POUNDS *yearly for* PRIZE DISCOURSES, *to be delivered in the Hall of ſaid College. The Subject of the following Diſſertation was preſcribed by Dr. Blackwell himſelf, above Forty Years ago; conſequently, long before the late Convulſions in Europe. The Author ſhall only farther obſerve, that in giving the moſt appoſite Examples which he could find in the Hiſtory of this Country, in Order to ſhew the Excellence of the Britiſh Conſtitution, he did not intend to throw any Blame upon any of the Parties, whether in the Miniſtry, or in Oppoſition, into which this Kingdom has been divided.*

THE EXCELLENCE

OF THE

BRITISH CONSTITUTION.

THE Conſtitution of this country has long been the glory of Britons, and the envy of foreign nations. Its principles, as an enlightened writer remarks, were originally imported from the woods of Germany; but they were firſt formed into a regular ſyſtem, and carried fully into practice in this happy iſland.

The Britiſh Conſtitution has been the work of ages; has employed the labour and engroſſed the attention of ſtateſmen, philoſophers and patriots; and has been eſtabliſhed by men of ſtrong minds, who lived at critical periods, and who, by their wiſdom, their bravery, or their ſufferings, have done eſſential ſervice to the cauſe of liberty. Not to ſpeak of the different governments among the Anglo-Saxons, or of the more ancient inhabitants of this iſland, a ſeries of important events, from the Conqueſt to the Revolution, was extremely favourable to Engliſh liberty: and every occurrence was eagerly laid hold on, by a brave and magnanimous nation, and improved to the beſt account by its patriotic leaders, who flouriſhed at different periods.

Soon after the Norman conqueſt, Henry the Firſt, and his ſucceſſor Stephen, to ſtrengthen their deficient titles to the throne, paſſed two different charters in favour of their ſubjects. The vices and cowardice of King John gave the

high-ſpirited Barons of England an opportunity of acquiring from that prince the famous deed, called *Magna Charta:* the ambition of Simon de Montfort, earl of Leiceſter, in the reign of Henry the Third, gave riſe to the Houſe of Commons: and the long continued wars betwixt the houſes of York and Lancaſter reduced the power of the crown, and confirmed the liberties of the people. Upon the union of theſe two houſes, though the princes of the family of Tudor were very arbitrary, the revival of learning, and the reformation of religion, were favourable both to religious and civil liberty. After the acceſſion of the houſe of Stuart, the abſurd pretenſions of James the Firſt; the evil counſels given to his ſon, who deſerved a better fate; and the profligacy of the court, joined to the cruelty of the miniſters of Charles the Second, prepared the way for that revolution, which the bigotry and arbitrary meaſures of James the Second rendered both expedient and neceſſary. But the follies, the vices, and the factions of republicans, and the uſurpation of Cromwell in the middle of laſt century, had ſhown the danger of imbibing levelling principles; and the nation was equally armed againſt the enthuſiaſm and fanatical ſpirit of thoſe who wiſhed to eſtabliſh a democracy, and againſt the ſuperſtition and paſſive obedience of thoſe who were willing to ſubmit to arbitrary power. Hence, fortunately for this country, our mixed form of government was eſtabliſhed and confirmed at the revolution. The ſubject's claim of rights was admitted—the prerogatives of the ſovereign were limited or explained—and no alteration was made on thoſe great branches of the conſtitution, which had borne the teſt of experience, and were found to be favourable to liberty. But the High Commiſſion Court was ſet aſide; the power of diſpenſing with the laws was declared to be unconſtitutional; a weak king, who had ſhewn himſelf unworthy to reign, was adjudged to have abdicated the government; and a great prince, who was nearly allied to the crown, and whoſe intereſt it was to preſerve the liberty, not only of Britain, but alſo of Europe, was, with the leaſt poſſible deviation from the order of ſucceſſion, elevated to the throne, by a real though not a nominal election.

It is from this memorable era of the Revolution, that we are to date the confirmation or full eſtabliſhment of our excellent form of government, which is a proper mixture of monarchy, ariſtocracy, and democracy, and which has been long known in Europe by the name of the Britiſh Conſtitution.

This Conſtitution, which experience has proved to be one of the greateſt efforts of human wiſdom, has of late been attacked by perſons of different deſcriptions and characters. Some who profeſs to venerate the Conſtitution would deſtroy ſeveral of its principles, when they inſiſt not for occaſional corrections of abuſes, nor even for a *moderate* and *rational*, but what they term a *radical* reform of the government.—Others cenſure the Britiſh Conſtitution as very imperfect at the beſt, and wiſh to eſtabliſh a republican government, under the name of liberty and equality. It is obvious, that the only concern which, in this diſcourſe on the excellence of the Britiſh Conſtitution, I have with perſons of the firſt mentioned claſs, is to explain incidentally thoſe parts of the Conſtitution which they do not properly underſtand; which they would remove or alter, merely becauſe they do not underſtand them; and by removing or altering which, they would, though they may not be conſcious of this, in effect overturn the Conſtitution. It is againſt the ſecond claſs of perſons—againſt thoſe men who decry our excellent Conſtitution, and favour levelling principles, that the following diſcourſe is particularly directed: and the friends of this Conſtitution are requeſted to hear with attention and candour, what may tend to confirm them in their favourable opinion; or at leaſt what may refreſh their memories, if it do not inſtruct their underſtandings.

The term *excellent* is in ſtrict language a *relative* term; yet it is alſo uſed in an *abſolute* ſenſe, and denotes *very good*. Therefore I apprehend that the moſt effectual way in which I can ſhew the excellence of the Britiſh Conſtitution, will be,

I.—To conſider it abſolutely, by delineating its great outlines, and by ſhewing the excellence of its different parts.

II.—To conſider it relatively, by comparing with it, in its moſt important articles, the principal free governments of ancient and modern times.

I begin

I begin with conſidering it *abſolutely*, by delineating its great outlines, and by ſhewing the excellence of its different parts.

All governments poſſeſs three diſtinct kinds of authority, *viz.* the legiſlative, the executive, and the judiciary powers. —The Prince, who has all theſe three centered in his perſon, is a deſpot; and the people who live under his government, though they may enjoy perſonal liberty, are in a ſtate of political ſervitude. Where, on the other hand, theſe three powers are common to all the inhabitants, there may be a few families (I do not ſay tribes) of ſavages ſcattered over a country that has been newly peopled; but there can be neither law nor liberty, neither order nor government. The ſame thing may be ſaid of a temporary anarchy in the convulſed ſtate of a nation, where all the conſtituted authorities have been pulled down, and nothing as yet is erected in their ſtead. It is only by the diviſion of the legiſlative, executive, and judiciary powers, and by the eſtabliſhing of checks againſt the improper uſe of any of theſe branches of political authority, that nations are rendered free and happy, and are equally diſtinguiſhed from the ſmall hordes of wandering ſavages, and from the myriads of ſlaves who are aſtricted to the lands on which they were born, or ſubject to the tyranny of a powerful deſpot. In the Conſtitution of this free country, thoſe powers are properly divided, and theſe checks are eſtabliſhed by law.

The Conſtitution of Great Britain is commonly ſaid to be a government by *King, Lords, and Commons.* But it may more accurately be defined to be a mixed form of government, where the legiſlative authority is entruſted to the King and two houſes of Parliament jointly, while the executive power is committed to the King alone; and the judiciary power is partly delegated to ſworn judges, or interpreters of the law, named by the King, and partly retained by the people, but committed occaſionally to certain ſelect judges, who compoſe what is uſually called a jury.

In order to ſhew the excellence of the Britiſh Conſtitution, viewed abſolutely, I ſhall conſider its great outlines.

Firſt, as ranged under the heads of the perſons, or conſtituted

ſtituted authorities, to whom theſe different powers are committed.

Secondly, as comprehended under the three great branches of the legiſlative, executive, and judiciary powers, which are wiſely diſtributed among the different conſtituted authorities.

By conſidering the Britiſh Conſtitution in each of theſe lights, every perſon will ſee it in that which he prefers: by viewing it in both theſe lights, it will be ſeen from all the points from which it can be viewed: and I humbly apprehend that, ſeen in either way, its excellence will be very evident.

I begin with conſidering the great outlines of the Britiſh Conſtitution, as ranged under the heads of the perſons, or conſtituted authorities, to whom theſe powers are committed. Here I ſhall ſhow, as I go along, the utility of all theſe conſtitutional powers, and the checks which the Conſtitution has eſtabliſhed for preventing the abuſe of them.

The perſons among whom thoſe conſtitutional powers are diſtributed, are the King, the Houſe of Lords, the Houſe of Commons, the Judges or ordinary interpreters of the law, and Juries or ſelect judges taken from among the people.

Firſt, As to the King.

The King of Great Britain, compared to the other conſtituted authorities, is ſaid to be *principium, caput et finis*, becauſe he convokes the two houſes of Parliament, gives the royal aſſent to all bills, and executes the laws or acts of Parliament; while the verdicts of juries, and ſentences of the judges, which follow upon them, are all put in execution by his authority. "Theſe conſtitutional powers," however, as Judge Blackſtone obſerves, "are not perſonal as "to the King, but attached to the Crown, unalienable and "indiviſible from it; and are not given for the benefit of a "ſingle perſon, but are conferred by the people to be uſed "for their advantage and ſafety." I ſhall ſhew that all the powers entruſted to the King are calculated to promote the general good of the nation, and that the Conſtitution contains various checks againſt the abuſe of theſe powers, tho'

the

the perſon of the King be inviolable, and the crown hereditary.

The powers committed to the King are called prerogatives; and under this claſs are comprehended, the whole of the executive power, a part of the legiſlative authority, the nomination of the judges, and the power of pardoning criminals.

1. The King is entruſted with the whole executive power. In virtue of this power, he appoints or removes miniſters of ſtate; makes peace or declares war; enters into treaties of commerce or of alliance, and ſends or receives ambaſſadors; is the fountain of honour in creating peers, nominating biſhops, and conferring titles of knighthood; fits out fleets or levies armies, granting or revoking commiſſions to his officers by ſea or land; and either convocates, prorogues, or diſſolves Parliaments. Thoſe powers are ample, yet they are equally neceſſary and beneficial.

In conſequence of the prerogatives of the King, in appointing or removing miniſters of ſtate, none of thoſe diviſions can take place in Britain, which are often dangerous, and ſometimes fatal to republican governments. In conſequence of his power of declaring war or making peace; entering into treaties of commerce or of alliance; and ſending or receiving ambaſſadors; all foreign nations can tranſact their national affairs as eaſily with the miniſters of the King of this free country, as with the vizier of a deſpot. In conſequence of his being the fountain of honour, he is at all times enabled to reward merit; and on ſome occaſions can prevent or defeat improper leagues and combinations among the nobility. In conſequence of his power of fitting out fleets and raiſing armies, and of nominating or removing his officers by ſea or land, he can overawe his enemies by any bold and deciſive meaſure, which either prevents a war from taking place, or renders it ſucceſsful; can quell any ſudden inſurrection among his ſubjects by a prompt exertion of authority; can employ all the abilities of his naval and military officers, ſecure their obedience, and puniſh their weakneſs or their crimes, and thus every way promote the tranquillity or the glory of his people. And finally, in conſequence of his

his power of convoking, proroguing, and diſſolving parliaments, he can on every occaſion have recourſe to the advice of his people in parliament, when neceſſary for him, and convenient for them; and at the ſame time he can diſmiſs the meetings of the two houſes, when their meeting is neither thus neceſſary nor convenient, or when it might interfere with the prompt or ſecret execution of government; or he can convoke a new parliament, when he ſuſpects that a faction wiſhes to get into power, or to maintain themſelves in office, in oppoſition to his own honour, to the merit of more deſerving men, or to the general inclinations of his people. All theſe things he can do; and as it is his intereſt to do ſo, he naturally will exert theſe prerogatives, which enable him to promote the general good of his people.

Theſe are the principal outlines of the executive power committed to the King; and the excellence of the Britiſh Conſtitution appears very evident, when, even in this curſory manner, we point out all the good purpoſes to which thoſe prerogatives are naturally ſubſervient. It is a mark of great excellence in the Britiſh Conſtitution, that in all theſe caſes the executive power *is left free to act*. For as the enlightened Monteſquieu obſerves, "the executive power ſhould never be limited in its power of execution." It is the arm and hand of the nation, and if it were limited in its power of execution, it would reſemble an arm that is bound up, or a hand that is maimed. It is ſufficient that proper checks be fixed by the Conſtitution againſt the improper exerciſe of this power, and theſe checks ſhall now be briefly mentioned.

Firſt, The King can exerciſe his executive power, as well as his other prerogatives, only by means of his miniſters, who muſt counterſign every deed, and be anſwerable for every exerciſe of the royal prerogative. Thoſe miniſters, in conſequence of their reſponſibility muſt be removed, when their meaſures are condemned by the two houſes of Parliament; and in caſes, where their removal from office is not thought ſufficient, they may be puniſhed for mal-adminiſtration. If they be impeached, the King's pardon is not pleadable againſt an impeachment; nor can they be kept in office, after they have

have raſhly declared war, or made a treaty of peace, of commerce, or of alliance, or taken any very important meaſure that has been condemned in parliament.

Secondly, Though the two houſes of Parliament cannot interfere with the firſt exerciſe of the executive power, yet on any particular emergency, either of them may adviſe his Majeſty reſpecting the exerciſe of any of his prerogatives; and it is their duty to do ſo, when this appears to them to be neceſſary.

Thirdly, Though the King has the power of conferring honours, or of creating Peers, nominating Biſhops, and of beſtowing the different orders of Knighthood, yet he cannot by virtue of any of his prerogatives take away any of theſe honours. He is the organ of rewards; but in this free country a man can be puniſhed only in conſequence of a verdict of his peers. Thoſe who receive honours are not thereby rendered dependent on the King, but are enabled or encouraged to do their duty as members of the ſtate.

Fourthly, In regard to the ſuppreſſing of inſurrections or tumults, except in the caſe of open rebellion, the riot act muſt be read; and the military can act only by orders of the civil power.

Fifthly, In regard to the carrying on of war, the Commons can effectually put a ſtop to this, by refuſing the ſupplies, or by voting only a ſmall number of men for the ſervice of the current year. And either houſe of Parliament can ſtill more effectually check an ambitious miniſter, by allowing the mutiny act to expire, and thus virtually diſbanding the army. As war is a calamity to mankind, as the continuation of it requires *deliberation*, as well as execution, and as the raiſing of too great armies in the time of peace might be dangerous to liberty, theſe checks are always beneficial, and ſometimes neceſſary.

Laſtly, In regard to the convocating Parliaments, or calling new ones, the King muſt convoke his Parliament once a year, for the ſake of getting the ſupplies voted and the mutiny bill paſſed; and though he may diſſolve them ſooner, yet he cannot retain the moſt favoured Parliaments more than ſeven years.

Thus

Thus the excellence of the Britiſh Conſtitution appears equally evident in giving full power to the King to execute the laws, and in eſtabliſhing complete and effectual checks againſt the abuſe of this power.

II.—As to the ſhare which the King poſſeſſes of the legiſlative authority. The King's prerogative here is very limited; it is merely the power of rejecting, and has been very rarely exerciſed. Yet as the enlightened Monteſquieu remarks, "the executive power ought to have a ſhare in the legiſla-"ture; otherwiſe it would be ſtripped of its prerogative." I would add here, that this power of rejecting is as neceſſary for preſerving the rights of the people, as for defending the prerogatives of the King. The power of creating peers is uſeful for preventing a combination among the nobility; and the power of diſſolving Parliaments is alſo uſeful when a difference ariſes between the two houſes, or when the commons alone oppoſe both the miniſters of the King and the inclinations of his people. But the negative of which I am now ſpeaking, may ſometimes be of ſervice, in checking a combination among the leading men in both houſes of Parliament; at a time when it might not be proper to diſſolve them.—This veto of the King is particularly obnoxious to ſome profeſſed friends of the conſtitution, who would only allow his Majeſty a ſuſpenſive, not an abſolute veto. Yet this negative is often beneficial, and may be neceſſary. It is in fact only a ſuſpenſive veto, when the people ſupport the two houſes of Parliament, and it becomes an abſolute rejection of a bill, only when the public opinion is in favour of the King, and when the people ſupport his miniſters at the next election of the Houſe of Commons. If they ſupport the former Parliament, the King muſt give up the matter in diſpute, as William III. was obliged to paſs the triennial act. On the other hand, if his preſent Majeſty had been obliged to exerciſe his negative with reſpect to Mr Fox's Eaſt India bill (which at that time was almoſt univerſally believed to be equally ſubverſive of the prerogative, of the King and of the chartered rights of the people) the nation would have ſupported the executive power againſt that combination in the two Houſes of Parliament, which was known by the

name of the Coalition. In this caſe the veto of the Prince would have become abſolute, and have equally protected the King and the people from the power of an ambitious ariſtocracy, which the coalition party at that time was, in the opinion of a great majority of the nation. I enquire not into the truth of this opinion, or whether it was well or ill founded: But I am warranted to ſay, that the negative of the King, though it has not been uſed ſince the acceſſion of the reigning family, is a valuable branch of the prerogative, which can be uſed when a diſſolution of Parliament would be improper, and which preſerves both the prince and the people from any unconſtitutional combination among the leading men in the two Houſes of Parliament.

III.—The power, which the King conſtitutionally poſſeſſes of naming the judges, or interpreters of the law, is almoſt all that remains of the whole judiciary power, which in ſmall ſtates and rude ages is committed to the ſovereign. The courts of law are conſtituted, the public proſecutions are carried on in his name, and the judges are nominally his ſubſtitutes. All this is abſolutely neceſſary, as the King is entruſted with the execution of the laws, and is nominal proprietor of all the lands in the kingdom. But in fact his authority extends only to the nomination of the interpreters of the law, and as the eminent writer formerly quoted obſerves, the buſineſs of a King is not to judge, but to appoint the judges. To prevent any abuſe of this power, the judges, once they are named, hold their office during life. If they were named by private perſons, as they were in the days of the feudal ſyſtem, their nomination might be procured by bribery. If they were removeable at pleaſure, they would be too dependent on the King, and might be induced to diſcharge their office capriciouſly, or to the injury of the people. But the King of Great Britain is too much elevated above his ſubjects to name the judges from unworthy or mercenary motives: And to preſerve the independency of theſe interpreters of the laws, which is to eſtabliſh the power of the laws themſelves, the Judges are independent of the King, if they do their duty, and hold their offices *ad vitam vel ad culpam*, or

quam

quamdiu ſe bene geſſerint, that is, *during life unleſs they be guilty of any crime*, or, *as long as they behave themſelves properly.*

The only other prerogative of the King, which I mentioned, to wit, the power of pardoning criminals, is moſt properly committed to the perſon whoſe office it is to execute the laws. Indeed it could not with propriety be committed to any other perſon: For juſtice could not be executed with mercy, as the King is bound to do by his coronation oath, if the executive power were not intruſted with this branch of the royal prerogative. In regard to many of our capital crimes, the ſeverity of our penal laws renders it often beneficial, and in thoſe caſes in which a man's innocence is diſcovered after ſentence has been pronounced againſt him, it is abſolutely neceſſary. It is alſo expedient to commit this power to a perſon whoſe elevated rank places him equally above corruption and reſentment. Yet to prevent any abuſe of this power, ſeveral checks are eſtabliſhed by the conſtitution. The King can pardon criminals in moſt caſes, but he can in no caſe exempt them from making reſtitution to the perſons whom they have injured. He can only grant pardons to thoſe who have been convicted in the ordinary courts of juſtice upon indictment, not in appeals of felony brought by private parties. His pardon is not pleadable to an impeachment of the commons in Parliament; nor can a man who has incurred a premunire for committing any man to priſon, in any place out of the realm, receive the King's pardon: nor can the King pardon a common nuiſance, ſo as to prevent an abatement of it, or an offence againſt a popular or a perſonal ſtatute, after information brought; and as no murderer is allowed to ſee two ſuns, or to live two lawful days after his conviction, the King can ſeldom pardon any perſon who has been guilty of murder, though condemned by the ordinary criminal tribunals.

Thus it appears that all the prerogatives of the King are neceſſary, uſeful, and ſubject to various checks which prevent them from being abuſed; and the excellence of the Britiſh Conſtitution is equally evident from the liberality and confidence ſhewn in committing theſe prerogatives to the King, and from the wiſdom and efficacy of the checks, which prevent

vent the abuſe of thoſe powers, which it has confided to the ſovereign.

The King however is inviolable in his own perſon. It is ſufficient that his miniſters are reſponſible for every exerciſe of his prerogatives. They are not too elevated above their fellow ſubjects to be tried without danger to the ſtate, or without ſhewing prejudice or partiality in their trial: nor does the trial of any miniſter, as the trial of the King would do, diſſolve the government. An impeachment of a miniſter of ſtate, at the bar of the High Court of Parliament, may occaſion a little more converſation, but produces no more diſturbance, than if it were an ordinary trial at the Old Bailey or at Guild-hall. Nay, though the King could not be tried with impartiality in the judges, or with ſafety to the ſtate, his miniſters can be tried very impartially, and the trial of a miniſter may produce the moſt beneficial conſequences, both to the King and to the nation.

The throne, as I formerly mentioned, is hereditary, and may be inherited by either ſex; though for the ſake of avoiding repetitions, I have in this diſcourſe ſpoken of the King only. This known and eſtabliſhed order of ſucceſſion prevents the diſturbances which ariſe in elective monarchies: The Government is not diſſolved in Britain by the death of the King, though perhaps the miniſters are changed; and many commotions are prevented by making the throne hereditary. There are however ſome things that may diſqualify the neareſt heir from ſucceeding. If he be a papiſt, or marry a papiſt, he cannot inherit; but the next in order of ſucceſſion, who is not thus diſqualified, muſt ſucceed to the throne. This diſqualification will probably never take effect; as the zeal for popery is now abated. But the very circumſtance of there being a diſqualification, is a practical denial of the divine right of Kings; and it is a proof of the excellence of the Britiſh Conſtitution, that it contains a check againſt the filling up of the vacant throne with a perſon who is evidently diſqualified to reign.

So much for the prerogatives of the King, and the checks which the conſtitution has eſtabliſhed againſt the abuſe of thoſe powers; while the perſon of the King is inviolable, and the

the throne hereditary. Next, as to the powers committed by the conſtitution to the *Houſe of Lords*.

In every well regulated government there is a ſenate, whoſe buſineſs is to moderate the heats of the people; and where they do not poſſeſs any ſhare of the executive government themſelves, to counſel or to check thoſe who are intruſted with the adminiſtration, and to enjoy a ſhare of the legiſlative authority. The Houſe of Lords is the ſenate of Great Britain, and is equally uſeful for checking the ambition of the miniſters of the King, and for repreſſing the violence of the repreſentatives of the people.

This houſe conſiſts nominally of two diſtinct claſſes of ſenators, called the Lords Spiritual, and Lords Temporal. The former are now only twenty ſix in number; but before the reformation they were much more numerous, when the mitred abbots and other dignified clergymen ſat in the houſe of peers. Power naturally follows property; and the Biſhops and other dignitaries of the church anciently poſſeſſed a large proportion of the lands and wealth of the Kingdom. At preſent the revenues of the Archbiſhops and Biſhops are in general neceſſary to enable them to ſupport their rank as Lords of Parliament: for they are not ſtrictly ſpeaking peers of the realm. The Temporal Lords are of three denominations, viz. Engliſh, Scots and Britiſh Peers. The firſt are thoſe whoſe anceſtors were Peers of England before the union. The ſecond are the Scots Peers, whoſe number is limited to ſixteen perſons: and the third are all thoſe Peers who have been created ſince the union, and whoſe number is unlimited. Viewed in another light, the rights of the Engliſh or Britiſh Peers are hereditary; the Scots Peers, though their honours be hereditary, are only choſen from one Parliament to another, to ſit in the houſe of Lords: and the Archbiſhops and Biſhops are ſenators for life in virtue of their high offices.

In regard to all thoſe denominations of Britiſh Senators, the principle of our excellent Conſtitution is, that thoſe perſons whoſe rank is elevated, and whoſe fortunes are very affluent, who have a deep and permanent intereſt in the proſperity of the country, and who from their ſituation in life

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are equally fitted for reſiſting the unconſtitutional conduct of the King's miniſters, and for deſpiſing the clamours or calumnies of the populace, ſhould form a diſtinct branch of the legiſlature: and both in their collective and individual capacities ſhould enjoy certain powers and immunities, which are commonly called privileges. The rights of theſe ſenators are ſaid to be *inherent*, to diſtinguiſh them from thoſe of the Houſe of Commons, which are called delegated rights: but they are all derived from the conſtitution; and no peer can ſit in the Houſe of Lords, till he is twenty one years old, has taken the oaths to Government, and has abjured the principal articles of popery. The principle of the Conſtitution in regard to thoſe ſenators, is an excellent principle. It places in a ſeparate houſe, thoſe perſons who from their rank and fortune would generally carry all public meaſures, if they met in the ſame houſe with the repreſentatives of the people. It gives them a perſonal or hereditary right, whereas if the whole parliament was elective, the peers would engroſs the whole repreſentation in times of tranquillity, and in times of commotion would be able to make no reſiſtance. In the Scots Parliament, where there was no ſeparate houſe, thoſe evils were frequently experienced: But the excellence of the Britiſh Conſtitution conſiſts in eſtabliſhing a Senate to be a check on the repreſentatives of the people, and in placing in this ſenate the moſt powerful barons, and dignified churchmen who compoſe the higheſt ranks of the people.

The powers committed by the Conſtitution to the Houſe of Lords are, a ſhare of the legiſlative authority, the right of deciding all civil cauſes in the laſt reſort, as a ſupreme court of appeal; the privilege of judging in all criminal cauſes, where Peers or Lords of Parliament are brought to be tried for crimes; the important truſt of trying, as the High Court of Parliament, all impeachments brought from the houſe of Commons; and the privilege, both in their collective and individual capacity, of giving their advice to the King in perſon.

Firſt, The Houſe of Lords has a ſhare of the legiſlative authority. In all ordinary matters of legiſlation either this houſe or the Houſe of Commons may introduce or initiate any

any bill, and ſend it to the other houſe, or may receive and amend a bill that has been firſt paſſed in the other chamber of Parliament. There is however an exception in the caſe of money bills, where the ſubject is not a matter of ordinary legiſlation, but a ſupply to be granted to his Majeſty. In this caſe the houſe of Peers can neither introduce nor amend a bill. The houſe of Commons alone can introduce and correct ſuch a bill; and the Lords have only the power of rejecting it, the ſame power which the King has in regard to all bills. The diviſion of the legiſlative power is here attended with the moſt beneficial effects. It prevents laws from being paſſed haſtily or in a crude ſtate, by ſetting the one houſe of Parliament to correct the proceedings of the others in matters of legiſlation. It alſo tends to preſerve the rights of all the different orders of the community, by eſtabliſhing checks in the different legiſlative bodies. And the houſe of Lords having leſs heat than is uſually found in the houſe of Commons, is particularly fitted for the examination of bills, or propoſed acts, before they are paſſed into laws. But in regard to money bills, this houſe, whatever powers it anciently poſſeſſed, is now only veſted with the power of rejecting. As the Peers are ſuppoſed to be, and in fact generally are, men of conſiderable fortune, they can afford to pay greater taxes than could be born by the people; And as they are often employed in public offices, they might gain incomparably more by theſe employments, than the amount of the taxes paid by them as individuals: Therefore the conſtitution has deprived them of the power of introducing or amending money bills. But as the Britiſh Senate is very well calculated for checking the ambition of a popular miniſter, as the commons in a fit of loyalty might vote too large ſupplies to the executive power, and as the King would not probably reject any money bill, unleſs it were clogged with ſome diſagreeable conditions, the houſe of Lords is veſted with the power of rejecting ſuch bills, though it can neither introduce nor amend them. It is of no conſequence to enquire in what way they loſt this power: But it is a ſtriking evidence of the excellence of the Britiſh Conſtitution, that where wiſdom only is required, the powers of the two

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houſes of Parliament are equal in the making of laws; but where generoſity is to be diſplayed to the King, or taxes are to be impoſed on the people, the houſe of commons only can vote ſupplies to the government; and when they have paſſed any bill for this purpoſe, the peers can only uſe their wiſdom in checking that houſe, when the grants of the Commons are either imprudent or unconſtitutional. Yet here, even when limited themſelves, and where the King would not chooſe to limit them, the Lords can check the houſe of Commons by rejecting a money bill.

Secondly, The houſe of Lords is the ſupreme Court of Appeal, which decides all civil cauſes in the laſt reſort. Theſe Senators of Great Britain, placed by their high rank beyond the ſuſpicion as well as the temptation of corruption in the deciſion of private cauſes, partly conſiſting of ſeveral of the moſt eminent lawyers of the age, who have been raiſed to the woolſack or to the peerage, and having the twelve judges or interpreters of the law of England, as their aſſeſſors to give their opinion upon points of law, are admirably fitted to diſcharge this important truſt both with ability and with impartiality: And, though on certain political ſubjects and public queſtions, they are ſuſceptible of party ſpirit, and like all men are often divided in opinion, yet in private cauſes they are generally unanimous in their deciſions. No doubt they are influenced by the opinions of the moſt eminent of the law lords; but they are influenced here by mere reſpect for their ſuperior knowledge, joined to a belief of their integrity; and make no difference or diſtinction between ſuch a man's being Chancellor, or out of office, in the miniſtry or in oppoſition. Hence they have never been ſuſpected of giving a deciſion in a private cauſe, which they knew to be unjuſt. This is ſurely another evidence of the excellence of our Conſtitution.

Thirdly, The houſe of Lords is veſted with a power of judging in all criminal trials, where Peers or Lords of Parliament are arraigned. This is a privilege not only of the houſe in general, but of every individual Peer or Lord of Parliament in particular;—of the houſe in having a right to judge, of every individual in being thus judged: Nay what is

is another evidence of the excellence of the Britiſh Conſtitution, this privilege is requiſite for promoting the ends of material juſtice. Here Monteſquieu obſerves with peculiar propriety, "The great are always obnoxious to popular "envy; and were they to be judged by the people, they "might be in danger from their judges, and moreover "would be deprived of the privilege which the meaneſt "ſubject is poſſeſſed of in a free ſtate, of being tried by his "peers. The nobility, for this reaſon, ought not to be "cited before the ordinary courts of judicature, but before "that branch of the legiſlature, which is compoſed of their "own body." Here therefore we have another proof of the excellence of the Britiſh Conſtitution, that the nobility and Biſhops are tried by the houſe of Peers.

Fourthly, This houſe is veſted with the important truſt of trying, as the High Court of Parliament, all impeachments brought from the Commons. Where the ordinary forms of law cannot be ſo properly uſed, where the criminal is ſuppoſed to be a great offender againſt the liberties of the ſubject, or the conſtitution of his country—and where the houſe of Commons in name of all the Commons of Great Britain, impeaches him of national and public crimes, the houſe of Peers, as the High Court of Parliament and the ſupreme tribunal of the nation (which is far above the temptation of private corruption and the arts of factious calumniators, and which can neither be overawed by threats, nor influenced by clamours) is the only proper Court for trying great offenders, or men in public characters, who are accuſed of treaſonable practices, or of high crimes and miſdemeanours. The nation would not ſtoop to proſecute ſuch criminals before the ordinary courts of juſtice, the judges would be intimidated if the nation condeſcended to become proſecutors, and the trial could not be conducted impartially. When the repreſentatives of the whole Commons are the plaintiffs, the Senate is the only competent Court; for the High Court of Parliament is the proper tribunal of national juſtice. Inſtances of ſuch trials are but rare; yet they are ſufficiently numerous to warn great offenders of their danger: And as the very expence of ſuch trials is no ſmall puniſhment (for

ſtate crimes are intricate, and not ſo eaſily proved as a high-way robbery, which is a ſimple fact, though a capital crime) it is no ſmall evidence of the excellence of our Conſtitution, that it has provided for the impeachment of Miniſters of ſtate, Governors of Colonies or provinces, Judges, and other Officers of high rank, at the bar of the Houſe of Lords.

The laſt privilege of theſe Britiſh Senators, which I mentioned, was that they had a right, both in their collective and individual capacity, to give their advice to the King.—When they give this advice in their collective capacity, they draw up and preſent an addreſs to his Majeſty, which he muſt receive in perſon, and anſwer in like manner. When any Peer, or Lord of Parliament, wiſhes to communicate his private opinion to the King, he requeſts an audience in the king's cloſet, and the King muſt grant this requeſt, and name the day and hour for this private conference. Every Britiſh Senator is a hereditary counſellor of the crown; and from the great intereſt which the members of the houſe of Lords in general have in the proſperity of the nation, they will naturally give their beſt counſel to the ſovereign; and on every important occaſion they will feel it to be their duty to give their counſel, even where it is not aſked. But what on ſuch occaſions might not be ſo properly done in a public addreſs of this houſe, or what a majority cannot always be prevailed on to do from motives of intereſt or ambition, or from the fear of exciting a general alarm, can with great propriety be done by an individual Lord of Parliament. He can demand acceſs to the King; (the minions of the court dare not refuſe it) and uſing only perſuaſion and argument, ſupported by a ſimple ſtatement of facts, he can, in this perſonal interview, convey truth to the ear of Majeſty, and impart reaſon to the underſtanding of his ſovereign. The latter is not bound to follow his counſel, but he muſt ſubmit to hear it, even when it is not acceptable. It is certainly an additional proof of the excellence of the Britiſh Conſtitution, that while other princes are often unable to know the ſtate of their people, or of their miniſters adminiſtration, the King of Great Britain cannot be kept in ignorance, but is obliged to hear counſel, though he may not follow it; and by this means

means may be acquainted with facts and circumſtances, which may lead him to diſmiſs his miniſters, or change the meaſures of his adminiſtration. It was in conſequence of a conference in the King's cloſet that the coalition miniſtry was overturned; and upon the ſuppoſition that the noble Earl, now a Marquis, who requeſted this conference, was influenced to do ſo, only from public ſpirited motives (which it would be candid to admit) he very honourably diſcharged his duty as a hereditary counſellor of the Crown. Whatever his views were, it is the glory of the Britiſh Conſtitution, that as a Lord of Parliament he could claim his privilege of giving counſel to the King.

All theſe privileges are accompanied by checks, which prevent the abuſe of them. The ſhare which the houſe of Lords has in making laws is checked by the other branches of the legiſlature. Its powers as a ſupreme Court of Appeal are checked partly by the deciſions of the inferior Courts, but chiefly by that elevation of rank and independency of fortune which the Lords generally poſſeſs.—In trying the members of its own houſe, or other peers of the realm who are not permitted to ſit in the houſe of Lords, it diſcharges the duty of a jury, in which a man is tried by his peers; and is reſtrained by the principle of *honour*, which is the only principle of a monarchy, but is here accompanied with both *virtue* and *moderation*, the principles of republican governments, when every individual Lord of Parliament pronounces *guilty* or *not guilty upon my honour*, according to the nature of the evidence. The power of trying impeachments is checked partly by the circumſtance of another branch of the legiſlature being proſecutors or plaintiffs, and partly by the abovementioned principles. And the power or privilege of giving advice to the King is checked by the influence of miniſters and the inclinations or diſpoſitions of the ſovereign; or it may be checked by an oppoſite addreſs from the Houſe of Commons, or by a different counſel given by another Lord of Parliament. Beſides it is only the power of reaſon and perſuaſion. The King is not bound to follow the advice given to him, either by the whole houſe or by any individual Peer.

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This much ſhall ſuffice for the powers or privileges of the houſe of Lords, and of the individual members of that houſe. It needs be only added, that to induce theſe ſenators to maintain their rights, the King cannot take away the title of a Peer or Lord of Parliament, though he can both create temporal Peers, and nominate Archbiſhops and Biſhops. What is a man's own, and what he has great intereſt in retaining, he will naturally wiſh to preſerve and improve to the beſt account; and though an individual Peer may ſometimes act a mean part, the Peers in general will aſſert their rights. The Conſtitution has conferred on them all theſe privileges, not for the ſake of the Peers or Lords of Parliament, but for the general good of the nation; has wiſely entruſted all theſe powers to an order of men whoſe intereſt it is to do their duty, and has eſtabliſhed a variety of checks againſt the abuſe of theſe powers or privileges, in caſe a ſenſe of their true intereſt ſhould not reſtrain them.

The powers which are entruſted to the Houſe of Commons come now to be conſidered; and when properly underſtood, they will be found a ſtrong additional evidence of the excellence of the Britiſh Conſtitution; or rather to contain a variety of diſtinct proofs of its excellence. Indeed ſome profeſſed friends of the Conſtitution place their ſole reliance on the houſe of Commons: But though this popular branch of the Conſtitution is certainly a great ſupport to liberty, the other branches are alſo to be reſpected by every true friend of our well-poiſed political ſyſtem.

The Houſe of Commons is not a ſenate, but a body of the repreſentatives of the people. As it is a body of repreſentatives, it naturally imbibes the ſentiments of thoſe whom it repreſents, and therefore its debates are much warmer than thoſe of the houſe of Lords. But it is incomparably fitter for tranſacting the affairs of the nation, than if it were a collective aſſembly of the people. "The great advantage of repreſentatives," ſays Monteſquieu, "is their being capable of "diſcuſſing affairs: For this the people collectively are ex-"tremely unfit; which is one of the greateſt inconvenien-"cies of a democracy."

By the ſpirit and practice of the Britiſh Conſtitution, the Houſe

Houſe of Commons is not elected by the whole houſeholders or heads of families, far leſs by the whole freemen, but by the whole freeholders in the kingdom, the members of the other houſe excepted. It is a ſtrong proof of the excellence of the Britiſh Conſtitution, that it commits the power of electing repreſentatives to freeholders only, and not to houſeholders or individuals. No man who is dependent, or placed in the very loweſt ranks of the people, and conſequently who has no will of his own, or may eaſily be frightened or corrupted, ſhould be an elector of the national repreſentatives. If it were poſſible to fix the preciſe point at which the capacity of electing ſhould commence, it would be, where the ſervile ſpirit is renounced, and ſentiments of liberty begin to prevail. This however cannot be done in practice. But the Conſtitution of England as far back as the 8th of Henry VI. (in 1430) limited the power of electing knights of the ſhires, or county-members, to ſuch perſons as poſſeſſed forty ſhillings a year, free from all burdens, of land within the county. The admitting any of the loweſt claſſes of the people into the number of electors is as deſtructive to liberty, as if the elections were limited to be made only by men of conſiderable property. The populace can be intoxicated, or bribed, or eaſily impoſed upon, by the ariſtocracy in times of quietneſs, and factious leaders in times of public commotion. In the firſt caſe the nation would be ſubject to an ambitious combination among leading men, or to a temporary ariſtocracy: in the ſecond caſe to the tyranny of a faction, or what is worſe, to the many headed monſter anarchy. But the Britiſh Conſtitution appoints the repreſentatives of the people to be choſen by the freeholders only; and its excellence here conſiſts in making the election a matter of truſt, for the good of the whole Commons, not a matter of right veſted in every individual elector. It even requires in one caſe, where it is doubted whether any particular elector be a freeholder, that an oath be adminiſtered to him to prove his right to the freehold qualification. The Duke of Richmond once contended for *univerſal ſuffrage*; Mr Gray lately propoſed that every *houſeholder* ſhould be an elector. Our excellent Conſtitution ſays, neither every *freeman*, nor every

every *houſeholder* as ſuch, but *freeholders only*, can *elect repreſentatives*: and the excellence of the Conſtitution appears in eſtabliſhing this point (in order that the repreſentatives of the people may be the guardians of liberty) that their electors muſt be freeholders, not dependent upon the power, or wealth of others, or taken from the lower claſſes of the people.

The Houſe of Commons, though elected by the freeholders only, repreſents the whole Commons of the Kingdom. It poſſeſſes very ample privileges, of which the principal are the following.

It has the ſame ſhare in matters of ordinary legiſlation which the houſe of Lords poſſeſſes; and it has the ſole power of introducing and framing money bills. It has the ſole power of determining all conteſted elections among its own members. It is the grand inqueſt of the kingdom for enquiring into national grievances. When it has reſolved to impeach any man, it acts not only the part of a grand jury, but alſo that of public proſecutor; and in its collective capacity, it can adviſe his Majeſty in regard to the exerciſe of any of his prerogatives.

1. The Houſe of Commons has the ſame power in matters of ordinary legiſlation which the Houſe of Lords poſſeſſes; and it has the ſole power of introducing and framing money bills. In all other caſes of ordinary legiſlation it can either introduce or amend any propoſed law, in common with the houſe of Lords. But, as was before obſerved, in the caſe of money bills, theſe can neither be introduced, framed, nor amended by the Houſe of Lords, which has in regard to their bills ſimply the power of rejecting. This is a very important privilege, which belongs excluſively to the Houſe of Commons. Theſe repreſentatives of the people ought to poſſeſs it, becauſe the people now pay the greateſt ſhare of the taxes. (It was otherwiſe ſix or ſeven hundred years ago, when the Churchmen and great Barons paid almoſt all the ſubſidies to Government). The Houſe of Commons, by carrying the purſe of the nation, can enable the King to declare war, or compel him to make peace; can ſupport a miniſter in whom they have confidence, or by refuſing the ſupplies, or condemning any of his meaſures, can oblige

oblige him to reſign. When ſupported by the people, and enjoying the general confidence of the nation, the houſe of Commons is irreſiſtible; and both the King and Houſe of Lords muſt give way when the commons inſiſt for the removal of a grievance, or the paſſing of a popular bill into an Act of Parliament. But when this houſe loſes the good opinion of the people, either the King or the Houſe of Lords will eaſily get the better of the Commons; and if they be refractory, the King by diſſolving the Parliament will generally find a new Houſe of Commons more eaſily managed. In ſhort, where a conſtitutional check is proper or neceſſary to be uſed againſt this houſe, either of the other branches of the legiſlature will be found a ſufficient check; but where either or both theſe require a check, the Houſe of Commons will be found a very powerful one.

2. The Houſe of Commons has alſo the ſole power of determining all conteſted elections among its own members. This is an important privilege, as it ſecures the independence of the Houſe, and the proper repreſentation of the people. To prevent its abuſe, becauſe in this caſe there is no check from the other branches of the legiſlature, it is controuled by the obligation of an oath, and a ſworn Committee is by the Grenville Act appointed to try all diſputed elections. It is no doubt the intereſt of *every* member of this houſe that elections be tried fairly, as it may be *his own fate*, in a future election, to be engaged in a conteſt. But as a republican or popular aſſembly is not a proper court of judicature, the impartiality of the deciſions of the Houſe of Commons is ſecured by a ballot for a ſecret Committee, and by the ſanction of an oath. Theſe are ſufficient checks againſt the abuſe of this privilege.

3. The Houſe of Commons is the grand inqueſt of the kingdom, for enquiring into national grievances. In this character it is moſt beneficial to the nation, when it carries on its inquiries with zeal and perſeverance; and as it has not the power of examining a ſingle witneſs upon oath, but only of making an inquiry previous to a trial, it is formidable only to the guilty who are afraid of being tried. The innocent can be in no danger; and it is only upon ſtrong

preſumptions

preſumptions of guilt that this houſe will reſolve to impeach a great offender, or to addreſs his Majeſty to order a proſecution to be carried on before the ordinary Courts, againſt a perſon who is leſs conſiderable. This privilege therefore is very beneficial to the nation.

4. When the Houſe has reſolved to impeach any man, it acts not only the part of a grand jury, but alſo that of a public proſecutor. As a grand jury it finds a bill of indictment againſt a great national offender, and preſents it under the title of an impeachment before the Houſe of Lords. In the name of all the Commons of Great Britain it carries on the proſecution before that High Court of Parliament. It is a mark of great excellence in the Britiſh Conſtitution, that the greateſt offenders can be laid hold of by the power of impeachment. But it is alſo wiſely ordered, that this privilege of the Commons is completely checked by the conſtitutional authority already mentioned as committed to the Houſe of Lords, namely the power of trying all impeachments. It is only neceſſary to add, that an impeachment is not ſtopped by a diſſolution of Parliament; but a new Houſe of Commons may carry on the trial, taking it up preciſely where it was left by their predeceſſors. This important point was determined in the trial of Mr Haſtings; and was worth all the expence and all the time conſumed on that trial.

Laſtly, The Houſe of Commons in its collective capacity can adviſe the King in regard to the exerciſe of any of his prerogatives: In caſe the Houſe of Lords, and all the individual members of that houſe, ſhould forget their duty as hereditary counſellors of the crown, or ſhould give improper advice to his Majeſty, the repreſentatives of the people, in their collective capacity, may by addreſs, petition, or remonſtrance, adviſe the King in regard to the exerciſe of any of his prerogatives, and if they keep within the line of the conſtitution, their advice will be ſupported by the public opinion, and liſtened to by the ſovereign: But if from factious or ambitious motives they attempt to ſerve a party, or encroach on the royal prerogative, they will be as unſucceſsful as the coalition party was about 15 years ago, when they in ſtrong terms, counſelled his Majeſty to remove a new miniſtry, whoſe

whoſe meaſures they had not got time to judge, merely becauſe they had no confidence in theſe miniſters.

Thus the privileges of the Houſe of Commons are very conſiderable, and highly beneficial to the nation; and every privilege is prevented from being abuſed, by proper checks eſtabliſhed by the Conſtitution.

But beſides theſe particular, there are two general checks againſt the Houſe of Commons. The duration of Parliament is limited to ſeven years at fartheſt, and the members are *immediately* choſen by the freeholders their conſtituents. In order that the Members of the Houſe of Commons may feel that they are only repreſentatives of the people, and may do nothing hurtful to liberty, the duration of any particular parliament, which before the revolution was ſubjected to no limitations but the King's pleaſure, was firſt limited to three, and afterwards extended to ſeven years. The Parliament may be diſſolved ſooner, but it cannot continue longer. The members of the Houſe of Commons are therefore removeable at the end of ſeven years: They are alſo choſen directly by their conſtituents, the freeholders of the kingdom. This renders them much more dependent, than if the freeholders firſt choſe electors, and then theſe electors had choſe repreſentatives. If they were removeable at the end of ſeven years, and if the electors alſo were removeable, they might have a chance to be choſen again, by getting into the good graces of a new ſet of electors. But the electors are fixed and known; the repreſentatives of the people only are removeable. Theſe are two ſtrong checks againſt the Houſe of Commons, and equally ſtrong evidences of the excellence of our Conſtitution.

So much for the privileges of the houſe of Commons, and the checks againſt the abuſe of them.

It may be proper to mention, that both houſes of Parliament have the privileges of freedom of ſpeech, of perſon, and of domeſtics. Theſe two laſt are decent marks of reſpect, which are ſometimes uſed, and ſometimes not inſiſted upon: but the firſt is of great importance. It is equally neceſſary and beneficial that the legiſlators of any country ſhould have unlimited freedom of ſpeech, when debating on

the affairs of the nation. The imperious Elizabeth told the Speaker of the houſe of Commons, that ſhe would allow freedom of voting, but not freedom of ſpeech. Such unconſtitutional language would not now be tolerated even in the Sovereign. The two houſes of Parliament have an unlimited freedom of ſpeech; and it was ſtrongly but juſtly ſaid not long ago, that if treaſon could have been ſpoken in the houſe of Commons, that houſe could not now have exiſted. This privilege however is ſubject to the authority of the two houſes; and extends only to what is ſpoken within the walls of the chambers of Parliament.

I now proceed to conſider the power of the judges, or ordinary interpreters of the law.

Theſe in Scotland are in all civil cauſes more conſiderable than in England, becauſe juries are not uſed in the former country in civil queſtions, excepting in cauſes depending before the Court of Excheqaer, which is after the Engliſh model, and in ſerving a perſon heir to a title or eſtate. As the Roman law is chiefly uſed in Scotland, and is more ſyſtematic than the law of England, it would be more difficult to get proper jurymen in the former country than in the latter; yet the laws and practice of England are preferable on the whole. In criminal trials juries are uſed in both countries; and as I have already quoted from Monteſquieu, it is the privilege of every ſubject in a free ſtate to be tried by his peers.

In both civil and criminal cauſes the judges of England are, ſtrictly ſpeaking, only the Preſidents of the Courts of Juſtice, who explain and interpret the laws. The jury are the *judices ſelecti*, the judge being only the *prætor* who appoints them. In ſome cauſes, where queſtions of mere law are to be decided, the judges have the power of the Roman centumviri. In criminal cauſes the judge can grant a reſpite in England; but this muſt be done before he leave the town in which he has been holding the circuit or aſſize.—This is meant to be a check againſt improper influence: otherwiſe the reſpite is an act of humanity. Thus the judges are limited both in their power of judging, and in uſing their power of granting a reſpite.

But

But in order that the judge may feel himſelf independent, and may diſcharge his duty both with fidelity and with dignity, his office is for life: And if he faithfully interpret the laws, and acquire the eſteem of the nation, he may ſet even theſe grand inquiſitors, the houſe of Commons, at defiance. This was done about a century ago by an upright and ſpirited judge, who made that houſe ſenſible that *the law* was above *any one branch* of the legiſlature, and could be altered only by the concurrence of *all the three* branches, or whole legiſlative authority. On the other hand, where there are preſumptions, though there be not proofs, of a judge's being corrupted, the inquiſition of the houſe of Commons is an excellent check againſt all corrupt judges, eſtabliſhed by the Conſtitution.

It is alſo lawful to the King to remove any of the judges, who behave ill, upon an addreſs from the two houſes of Parliament—So that the iniquity of the judges is doubly provided againſt by our excellent Conſtitution.

It only remains, on this branch of my ſubject, that I conſider the powers entruſted to juries. The trial by jury has always been conſidered as a palladium of liberty, and is the greateſt diſtinction in regard to judiciary procedure, between a free people, and a nation of ſlaves. In ſome ſenſe it may be ſaid, that wherever the trial by jury is eſtabliſhed, the people retain the judiciary power. But wherever this power is committed to a ſelect jury, it is alſo an important truſt committed to them, the faithful diſcharge of which is ſecured by the ſanction of an oath, as well as by a ſenſe of character, and the circumſtance of appearing only once in the ſame ſociety of jurymen, which puts all on their guard, and prevents them from running into parties. This trial by jury is ſo important a privilege, and ſo evident a proof of the excellence of our Conſtitution, that I need ſay nothing more on the power of juries, excepting, that this power in all caſes of libel, by a late act of Parliament, extends to both law and fact; that the parties have a right to challenge any juryman, and that to check any improper verdict of a jury, the judges have power to incloſe them a ſecond time, and to make them reconſider their verdict; but that if they perſiſt in the ſame opinion,

opinion, the judges muſt give way, and pronounce ſentence by applying the law to the verdict of the jury, or immediately acquit the perſon accuſed.

Having now deſcribed the different perſons or authorities to whom various conſtitutional powers are committed, allow me, in order to ſhew the excellence of the Britiſh Conſtitution, to bring all theſe perſons for a few moments before you, with a general view of their powers, and of the checks eſtabliſhed by the Conſtitution againſt the abuſe of them.

The King appears ſurrounded, not with a ſtanding army hoſtile to liberty, but with a numerous guard of prerogatives, with the whole of the executive power, a veto in the legiſlative, and the power of naming the judges, and pardoning criminals. But all theſe prerogatives are only truſts repoſed in the King for the good of his people; and they are checked by the reſponſibility of Miniſters, the privileges of Parliament, the independence of the Judges, and ſentence upon impeachments. The Lords come next with their legiſlative powers, their privileges as the ſupreme Court of Appeal, as the high Court of Parliament in the trials of Peers, as the great tribunal of national juſtice in caſes of impeachments, and as the hereditary counſellors of the crown. But all their privileges in legiſlation are checked by the other two branches of the legiſlature, in matters of judgment by a ſenſe of honour and character in private cauſes, and by reſpect for the whole commons of Great Britain in caſes of impeachment; and in giving counſel to the King they can only uſe reaſon and argument, and may be checked by oppoſite counſel given to his Majeſty. The Commons follow with their legiſlative powers, their Speaker, (carrying the purſe of the nation at his girdle) all aſſerting their privileges, judging their own elections, acting as the grand jury of the nation againſt Miniſters, Governors and Judges; and preſenting their impeachments to the high Court of Parliament, and counſelling the King in regard to the exerciſe of his royal prerogatives. But their powers are checked by the King and houſe of Lords, by the oaths of their ſelect committees, by the innocence of ſuſpected perſons, by the ſentences of the great national tribunal, and by oppoſite counſel given to the

the King. The Judges next ſucceed, carrying the laws which they interpret, being nominated by the King, yet holding their offices for life. Their powers too are however limited by the laws themſelves, or by the verdicts of juries; and they are liable to the ſevere inquiſition of the houſe of Commons, and amenable to the laws which they are accuſed of having violated or perverted. The Juries advance laſt of all, the great ſupporters of liberty and innocence; and preſent their verdicts to the courts of juſtice. Their truſts alſo are great; but their fidelity is inſured by the ſanction of an oath, and by every good principle in human nature; and they can be obliged to reconſider, but not to alter their verdicts, while they decide on the lives of their fellow ſubjects.

On a general view of the whole conſtituted authorities of this kingdom, we find a ſeries of powers, and a ſeries of checks. The different powers are nothing elſe but a multitude of truſts committed to all the different perſons or conſtituted authorities, from the great prerogatives of the King to the verdict of a petit jury. And the conſtitution has eſtabliſhed a number of proper checks againſt the abuſe of theſe powers, from the reſponſibility of a miniſter of ſtate, to the power of challenging a juryman. In ſhort, the Britiſh Conſtitution, viewed in this light, is a combination of powers, kept in their proper places by a combination of checks. It is impoſſible to view with attention all theſe conſtituted authorities, whoſe powers are entruſted to them with a liberal confidence, and yet made to check each other with propriety and efficacy, without acknowledging the excellence of the Britiſh Conſtitution.

Thus I have pretty fully delineated the great outlines of our excellent Conſtitution, as contained under the heads of the different conſtituted authorities, or perſons to whom theſe different powers are committed.

It will not be neceſſary to be ſo particular, in conſidering it as comprehended under the great branches of the legiſlative, executive and judiciary powers, which are wiſely diſtributed among theſe different conſtituted authorities. Yet it will be proper to view the Conſtitution alſo in this light, that we may fully diſplay its excellence, by ſhewing the wiſdom of

of this diſtribution, and its happy effects in promoting the general good of the nation.

In diſcourſing of the wiſdom of the diſtribution of the different kinds of political authority, the legiſlative power falls firſt to be conſidered.

Here I would obſerve, that the diviſion of the legiſlative power is a proof of the excellence of the Britiſh Conſtitution. The following obſervations of De Lolme merit attention; and in juſtice to that intelligent author, they ought to be fairly quoted as made by him. "Though it be abſolutely neceſſary, for ſecuring the Conſtitution of a ſtate, to reſtrain the executive power, yet it is more neceſſary to reſtrain the legiſlative. But here we muſt obſerve a difference between the legiſlative and executive powers. The latter may be confined, and even is the more eaſily confined when undivided; the legiſlative on the contrary, in order to its being reſtrained, ſhould abſolutely be divided. For whatever laws it may make to reſtrain itſelf, they can never be, relatively to it, any thing more than ſimple reſolutions: as thoſe bars which it might erect to ſtop its own motions, muſt then be within it, and reſt upon it, they can be no bars. In a word, the ſame kind of impoſſibility is found to fix the legiſlative power, when it is one, which Archimedes objected againſt his moving the earth. And ſuch a diviſion of the legiſlative, not only renders it eaſy to be reſtrained, ſince each of thoſe parts into which it is divided, can then ſerve as a bar to the motions of the others, but it even makes it be actually reſtrained. If it has been divided into only two parts, it is probable that they will not in all caſes unite, either for doing or undoing: if it has been divided into three parts, the chance that no more changes will be made, is thereby greatly increaſed."

I would add to this laſt obſervation, that though the diviſion of the legiſlative power into three parts, is highly proper, and a diſtinguiſhing mark of the excellence of our Conſtitution, yet it would be very improper to divide it into more than three. It is enough that one of the houſes of Parliament introduce and frame a bill, the other amend it, and the King reject it when this is neceſſary. In regard to granting

granting ſupplies, this branch of legiſlation ſhould principally depend upon the repreſentatives of the people who pay the greateſt part of the taxes, the other houſe having a power of rejecting, in caſe the offer of the Commons be either imprudent or unconſtitutional, becauſe the King would here ſeldom exerciſe his negative. Beyond theſe three parts therefore of King, Lords and Commons, every farther diviſion is not only uſeleſs, but even hurtful to the nation.

In ſhort, when we look at the legiſlative authority as *divided* between King, Lords and Commons, we may ſurvey the laws of Great Britain as compounded of *Energy*, *Wiſdom*, and *Liberty*. By the firſt they are rendered effectual, and *fit to be executed*, when the King to whom the executive power is committed gives his royal aſſent. By the ſecond they are corrected, or framed *judiciouſly;* and by the third they are drawn up with a proper regard to the *liberties* of the people. This therefore is the general character of all the Bills, which are paſſed into Acts of Parliament. But the legiſlative powers may not always agree; and where they differ, the bill muſt be dropped as not fit to be executed, as unwiſe, or unconſtitutional. Yet the difference in this caſe, between the three branches of the legiſlature, is merely a difference in opinion. There is no heat, at any rate no commotion occaſioned by this diverſity of ſentiment. But as one has well expreſſed it, "all is tranſacted in the regions of the under-"ſtanding; and the only contention that ariſes is wholly "carried on with theſe inoffenſive weapons Ayes and Noes."

Paſſing from the diviſion of the legiſlative authority, to the conſideration of the diſpoſal of the executive power, I would obſerve, that by the Conſtitution the whole executive power is committed to the King. The advantages of this are many and obvious. It is requiſite that the executive government poſſeſs unity, ſecrecy, and alacrity or expedition, in its adminiſtration. If there be want of unity, the government is divided or diſtracted; if ſecrecy be wanting, its moſt important ſchemes are diſcovered and more eaſily counteracted; and if it want expedition, its beſt laid plans are prevented or defeated. By veſting the King with the whole executive power, all theſe evils are avoided; and the ſame unity,

ſecrecy

ſecrecy and expedition may be found in the executive government of Great Britain, as in the Divan of Turkey.—When any of our kings have employed bold and enterprizing miniſters, this aſſertion has been uniformly verified. Not to ſpeak of the glories of Marlborough's different campaigns, the taking of 3000 French ſailors with a number of ſhips at Newfoundland, and indeed the whole adminiſtration of Lord Chatham in the war 1757, may here ſerve as an example.

In ſhort, the advantages of committing the whole executive power to the King, are unity, ſecrecy, and expedition, very important matters in the adminiſtration of any government.

With reſpect to the judiciary power, it is requiſite that ſome perſons ſhould underſtand and interpret the laws, and direct the courſe of judicial proceedings, and others ſhould judge whether any particular action merited a trial, and alſo whether any particular perſon, who was brought before a court of juſtice, had committed the crime of which he was accuſed. Therefore in England the judges direct the courſe of procedure; the grand jury finds the bill of indictment, and the petit or ſpecial jury declares by their verdict whether the perſon accuſed be guilty or not guilty. In caſes where the laws require to be explained, the Conſtitution has eſtabliſhed interpreters, though the juries are at liberty to uſe their own reaſon, after hearing the charge from the bench. When general principles of law or expediency are to be decided on, it is proper there ſhould be a numerous jury, becauſe the queſtion here agitated may regard the ſafety of many; viz. whether ſuch a crime, if proved, would merit a particular puniſhment, or whether a trial be expedient and neceſſary. When a particular perſon is afterwards to be tried, it is proper that the judges ſhould be ſelect, and not too numerous; becauſe a numerous aſſembly, however well qualified for judging upon general principles, cannot ſo well attend to particular circumſtances. Hence the excellence of the Britiſh Conſtitution in appointing judges and interpreters of the laws, who have ſtudied law as a ſcience for a great part of their lives, in eſtabliſhing numerous grand juries for preſenting offenders to trial, and in ſelecting

ſelecting petit juries, not ſo numerous, for trying the guilt or innocence of the perſon accuſed. (In Scotland theſe powers are ſhared among the judges, the public proſecutor, and the jury, except in caſes of treaſon, or ſerving of heirs, and revenue, where the Engliſh juriſprudence is uſed.) The diſtribution of the judiciary power between the judges and juries gives our courts all the knowledge that is to be acquired from the ſtudy of the laws, and all the integrity which is requiſite in determining general queſtions, when brought before a grand jury, or in judging particular cauſes committed to a ſelect or petit jury. Alſo, that no perſon may be injured by what is called packing a jury, the law has allowed a certain number of the aſſize who are propoſed as jurymen, to be rejected without aſſigning any reaſon; beſides an indefinite number, againſt whom valid objections can be ſtated and verified. Nay, leſt a man ſhould ſuffer from national prejudices, a foreigner tried in Britain is entitled to have half the number of his jury at leaſt, not Britiſh ſubjects but foreigners. Theſe are ſurely ſtriking evidences of the excellence of the Britiſh Conſtitution in conducting criminal trials.

In queſtions of property, or in civil cauſes, the laws are allowed to be excellent. But as theſe queſtions cannot be determined with the ſolemnity of a criminal trial, and yet are ſometimes very intricate, the Conſtitution has provided a chain of appeals; and the houſe of Lords is very properly appointed as the ſupreme court of review; becauſe there the judges have acceſs to the beſt information, and are above all ſuſpicion of partiality. But in criminal trials before the courts of juſtice, the verdict of a ſpecial jury is final, becauſe a commoner can only be tried by his peers. Only a power of pardoning criminals is left to the executive government; and where the evidence is narrow, or the offender an object of compaſſion, or where a man is found to have been innocent, after he has been convicted, this power of pardoning, as already mentioned, is very beneficial to the nation.

On the whole, the committing to the judges the interpretation of the laws, and the direction of judicial procedure,

tends to eſtabliſh the reign of the *Law;* the devolving the queſtions to be tried, whether general or ſpecific, on grand or petit juries, who have every inducement to give a true verdict, tends to promote *juſtice;* and the committing the power of pardoning to the executive government, enables the King to execute the *laws* not only with *juſtice* but with *mercy*. From a general review of the legiſlative, executive, and judiciary powers eſtabliſhed by our excellent Conſtitution, we find that the diviſion of the legiſlative authority among King, Lords and Commons, produces *Energy*, *Wiſdom*, and *Liberty* in the acts of legiſlation :—that the committing the whole executive power to the King, promotes unity, ſecrecy and expedition in the adminiſtration of government; and the diſtribution of the judiciary power among different judges and juries, while the King is empowered to mitigate the puniſhment, or pardon the offender, tends to eſtabliſh *Law*, *Juſtice* and *Mercy*, in our tribunals.

Although in deſcribing the excellence of the Britiſh Conſtitution, which is beſt done by analyzing its different parts, we ſhould rather look at the *nature*, than at the *effects* of that Conſtitution (becauſe a bad government may occaſionally be well adminiſtered) yet it is proper in this diſcourſe to point out ſome of the effects of our excellent form of government, in promoting the general good of the nation.

From the various checks and deliberate procedure of the different legiſlative bodies, our laws are paſſed in ſuch a manner that there is a great probability that crude and ill digeſted laws will either be amended or rejected. Experience has often verified this aſſertion.

From the perfect ſecurity which is given in this country to property of every kind, all ranks of the people having equality of rights, though with a conſiderable difference of fortunes, there is the greateſt encouragement to national induſtry. And beſides the advantages which we derive from nature, our national wealth has certainly been promoted by our free Conſtitution.

From the ſenſe that every man has of this ſecurity, no man is afraid of another; and as a great writer obſerves, " political liberty conſiſts in ſecurity; or at leaſt in the opi-

" nion

" nion that we have of our ſecurity." This opinion in Britain is certainly well founded, and it adds much to the happineſs of thoſe who do not poſſeſs affluent fortunes.

From the general attachment of all ranks to this Conſtitution, Great Britain has hitherto been enabled to reſiſt its enemies with an energy beyond the proportion of its numbers; and indeed, from its exceſſive attachment to liberty, it has perhaps ſometimes exerted itſelf beyond its natural ſtrength. No arbitrary king could have made ſuch exertions to ſupport his tyranny, as Britain has done to preſerve her liberty.

From the ſame ſentiments of liberty, the preſs in Great Britain has been generally free. This freedom has baniſhed ſuſpicion, detected vice, and promoted truth and virtue. The abuſe of this liberty only is puniſhable; but the privilege is enjoyed by every good citizen. And even when it is abuſed, or when a man is impriſoned for any crime, he can either force a trial, or procure his enlargement by the Habeas Corpus act. In times of imminent danger, this act is ſometimes ſuſpended, and improper meetings and writings are prohibited by temporary laws. Yet there is no nation in Europe in which there is ſuch liberty in ſpeaking or writing, as in Great Britain, or where a man's perſonal liberty, his life and property, are ſo ſecure as in this country. It may be proper here to remark, that Sir Thomas More in his Utopia, makes it " death for any to meet and conſult concerning the " ſtate, unleſs it be either in their ordinary council, or in the " aſſembly of the whole body of the people." So that in this reſpect there is leſs reſtraint in the practical conſtitution of Great Britain, than in the Utopian ſcheme of that celebrated writer.

Thus wiſe laws, national wealth, general happineſs ariſing from an opinion of ſecurity—national energy or ſtrength from attachment to liberty, and freedom of writing, ſpeaking and acting, ſubject to a few neceſſary reſtraints, are the effects of the excellent Conſtitution of Great Britain.

It would be improper, while deſcribing excellence, to ſpeak of objections; for excellence is oppoſed to deformity, imperfection, or vulgarity, not to falſehood. It has however been

been complained of, that the laws of Great Britain are complicated, and the forms of legal procedure extremely tedious. The laws however cannot be ſo ſimple in a rich nation and advanced ſtate of ſociety, as in a poor nation and a rude age. As to their tediouſneſs, "Why," ſays the illuſtrious Monteſquieu, "is not juſtice adminiſtered in Britain as "in Turkey," i. e. in a ſummary manner. The forms of the law are both the price and the evidences of liberty.—They are thorns which protect the roſe, yet do not leſſen its fragrance, or diminiſh its beauty. In thoſe nations in which they are unknown, the baſtinado and bowſtring ſupply their place.

PART II.

THIS leads me, from conſidering the Conſtitution of Britain abſolutely, to ſhew its comparative excellence, by comparing it, in the moſt important articles, with the moſt diſtinguiſhed governments of antient and modern times.

It is obvious that it would be ſwelling this diſcourſe to an unprofitable length, and loading it unneceſſarily with foreign matter, if I were to give you a very minute deſcription of the Conſtitutions of other countries, for the purpoſe of ſhewing the relative excellence of the Conſtitution of Great Britain. It will however be neceſſary to deſcribe the great outlines of theſe as briefly as poſſible, yet ſo as to give a general idea of each of them, before pointing out their ſeveral defects, compared to our own excellent Conſtitution. And I ſhall be ſatisfied with ſelecting the Conſtitutions of Athens, Sparta and Rome, among the antients; and thoſe of Venice, Holland, America, and the different Conſtitutions of France ſince the late Revolution in that country—among modern nations.

I begin with the Conſtitution of Athens.

Not to ſpeak of the Government of Athens in the time of its Kings, or decennial Archons, or during the uſurpation of Piſiſtratus and his two ſons (which continued nearly 70 years after the laws of Solon were publiſhed) the Conſtitution of Athens was in a great meaſure democratical; and after

after Pericles has limited the powers of the Court of Areopagus, it became a pure democracy. The people, who by the laws of Solon had only a limited ſhare of the government, paſſed laws, choſe generals, and tried criminals, almoſt entirely by their own authority. By their Conſtitution, the Senate, which was elected annually, and conſiſted firſt of 400, then of 500 perſons, had the power of propoſing every thing before the people could judge of it.—There was a radical error in the formation of this body. It was too numerous for ſo ſmall a ſtate, and it was too dependent from its annual election. It was rather a body of repreſentatives, though called a Senate; and could never ſtop the torrents of popular prejudice, paſſions, and opinions. The Areopagi, who were judges for life, were, as far as their powers extended, the real Senate of Athens till the days of Pericles. They reviewed the ſentences of the different Courts: And even when the people met in their public aſſemblies, the Areopagi could oblige them, not to alter, but to reconſider their opinions. And when this venerable Court, which was compoſed of all that had filled the office of Archon, deſired the people to reconſider, they generally altered their raſh decrees.—The *executive* power of the ſtate was partly divided among their *nine* annual Archons, partly exerciſed by the Senate, and partly retained by the people, who were moſt improperly allowed to paſs active reſolutions. In moſt caſes of importance, *the judiciary power* was diſtributed among ſuch an indefinite variety of Courts, that almoſt every citizen of Athens was a member of ſome Court or other; and in deſcribing the occupations and characters of a Spartan and Athenian, the former was ſaid to be *at his laſh*, accuſtoming himſelf to bear pain, the latter at his lawſuit, employed in deciding cauſes. The Athenians had a Court for trying inanimate things, by which any accident had been occaſioned; where the firſt criminal brought to trial was *an ax* (by which an ox had been killed in the temple of Apollo) The aſſembly of the people often tried cauſes in the laſt reſort, and ſometimes indeed in the firſt inſtance, although a republican aſſembly was neither a proper court of judicature, nor a proper court of review—And after Pericles, by abridging the power of the Areopagi, had pulled up the anchor

chor of the Athenian Conſtitution, there was neither ſtability in the laws, vigour in the adminiſtration, nor juſtice in the deciſions of the democracy of Athens. The imperfections of their *legiſlature* were ſo well known to themſelves, that they had a law, very neceſſary in their mobbiſh government, for puniſhing every man, who propoſed any decree that was found to be afterwards a bad one. Their error in *dividing the executive* power among ſo many perſons, was very properly cenſured by Philip, their enemy, who ſaid that the Athenians could find *nine* Generals every year, while he had *only one*, viz. Parmenio, in all his dominions. (Indeed the gaining of the battle of Marathon, was occaſioned in a great meaſure firſt by Ariſtides, and then by the other generals giving up the chief command to Miltiades.) Their ſcandalous abuſe of their *judicial* power, in their public aſſemblies, was evidenced by the death of Socrates, by their agreeing to deliver up Demoſthenes, and their patriotic orators, and by their impriſoning, baniſhing or putting to death, almoſt all their great generals, from the brave Miltiades to the venerable and uncorrupted Phocion. After the baniſhment of the Piſiſtratidæ, the Athenian government ſeemed, however harſh it may ſound, to be founded on *diffidence* or diſtruſt of all their public men. The virtuous Ariſtides, by the ſentence of the oſtraciſm, was obliged to leave his country for ſeveral years, becauſe he was called *the juſt* from reſpect to his virtue: And the keeper of their public ſeal could only hold his office for a ſingle day, and was incapable of being re-elected.—I have been the more particular in pointing out the defects of the Conſtitution of Athens, in order that the friends of liberty and equality may know what the moſt perfect democracy was found to be by experience. And I think it is evident, that the popular government of Athens, where the people paſſed *laws raſhly*, decided *cauſes unjuſtly*, and even came to many *active reſolutions*, in ſhort where the *legiſlative* power was in the *mob*, the *executive divided* among a number of perſons, and the ordinary *judiciary power* wonderfully diverſified and made a *ſubject of amuſement*, cannot be compared to our excellent Conſtitution, which is founded on a liberal confidence, and yet eſtabliſhes a variety of oppoſite

oppoſite checks, and where the legiſlative power is ſo properly divided, the executive kept entire, and the judiciary ſo wiſely diſtributed, as in Britain.

The Conſtitution of Sparta, which falls next to be conſidered, had for its object the *liberty and independence of the ſtate*, which Lycurgus, the legiſlator of the Spartans, wiſhed to render durable and illuſtrious, by preſerving it from corruption. The *liberty of individuals*, which conſiſts in reſigning no more than what is neceſſary to give up for the good of the public, was not at all in the view of their ſevere legiſlator. Every thing in Sparta belonged to the public; the individual citizens had almoſt nothing. They ate in public, and the men had all their exerciſes in public. (A neighbouring nation, which they had enſlaved, both ploughed their lands and performed all their menial ſervices.) Their children were alſo brought up by the ſtate, not by their own parents; though providence has implanted, in all creatures, the feelings of paternal affection.—Their Conſtitution, with which I am here chiefly concerned (but with which the manners and even morals of the Spartans were cloſely connected) was no doubt an ariſtocracy, according to the juſter views, which we in modern times have of the nature of the different kinds of government, though Polybius has praiſed it as a well contrived ſyſtem, compoſed of monarchy, ariſtocracy, and democracy. It was governed by *two Kings*, therefore could not be called a *monarchy*, and partly by other twenty eight perſons, who, along with the Kings, conſtituted the ſenate. Here all laws were propoſed, and paſſed as bills are in our Houſe of Lords: The people had only a power of rejecting them. They were not allowed to ſpeak or deliberate; but were obliged to meet in the open air, and could only refuſe or give their aſſent to what the ſenate had propoſed. About an hundred years after the death of Lycurgus, five Ephori, a kind of tribunes of the people, (though originally only judges in the abſence of both their kings, and afterwards mediators between the Kings and the ſenate) at laſt aſſumed a power of putting their kings to death. While the whole country of Laconia was divided into thirty thouſand equal parts, and was cultivated by the Helots, (the

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nation which I formerly mentioned as enſlaved) and while gold and ſilver were prohibited, the *judiciary* power was not much incumbered with buſineſs; and the two kings, who were the ancient judges, were not much ſkilled in matters of law. The *diviſion of the executive power* between the two Kings, and alſo the Senate, was often attended with bad conſequences, when there was any faction among the Senators, or ſtrife between the Kings. Of this the murder of Agis, one of the beſt of their Princes (for no other crime but attempting to reſtore the laws of Lycurgus) by the tyranny of the Ephori, and without the form of a trial, may ſerve for one example. And the murder of theſe very tyrants ſoon after by another King, Cleomenes, will prove the imperfection of the Conſtitution of Sparta. Exactly the reverſe of what is wiſely fixed by the Britiſh Conſtitution, *its Kings* could be tried and condemned. But its *ſupreme judges* could not be impeached; they could only *be murdered.* *The laws* of Sparta being firſt propoſed and paſſed in the Senate, might be *rejected* indeed, but could not be *amended* by the people; who had only that ſhare of the legiſlative authority, which our Kings enjoy, namely the power of rejecting. It was not to be wondered that thoſe laws were crude, and often barbarous. The great aim of the Lacedemonian legiſlators, was to deprive men of moſt of the feelings of humanity, which they accounted the weakneſſes of human nature, and to render their people ſtrong, alert and warlike.—With this view all ſickly and deformed children were deſtroyed ſoon after their birth; and the dreſs of their women, which did not reach to their knees, was calculated to render them hardy, at the expence of that modeſty which is ſo great an ornament to their ſex. Nay, men were permitted to lend out their wives by the laws of Sparta, which rendered, and were calculated to render their people hardy, but their women frequently unchaſte, and their wives, even in the higheſt ranks, often unfaithful. When we add that theft was permitted by their laws when it was done with dexterity, though ſeverely puniſhed when it was done aukwardly, and that thouſands of the Helots, when the poor people multiplied too much, were murdered in cool blood by an infamous

famous law, called Cryptia (or the ambuſcade), we may ſee how many crimes were neceſſary to preſerve the imperfect Conſtitution of Sparta. That Conſtitution, with which, as I ſaid, the manners and morals of the Spartans were cloſely connected, was preſerved ſo many years, not by its double monarchy, its ariſtocratical ſenate, and rigid or tyrannical Ephori, while the people had little political authority; but by the auſterity of the manners of the Spartans, and by the union of a few of the more manly virtues to all the ferocious vices which prevent a nation from becoming effeminate. Our excellent Conſtitution which permits no ſlavery to exiſt in Britain, which unites induſtry with liberty, which divides not the executive power, but gives the people a principal ſhare both of the legiſlative and judiciary powers, which preſerves the perſon of the King inviolable, but expoſes its corrupt judges to the inquiſition and impeachment of the Commons, and to the judgement of the Britiſh Senate, tends to promote virtuous principles, and cheriſh the beſt feelings of human nature, and needs not to be ſupported by theft, incontinency, and murder.

It may be further obſerved in regard to the Conſtitutions both of Athens and Sparta, that, though theſe might have anſwered tolerably well in the ſmall ſtates in which they were eſtabliſhed, each of which was not larger than one of our counties, and both of which occupied leſs ſurface than that of Yorkſhire, yet neither of them could have anſwered for a large and populous country like Britain. Indeed as Monteſquieu has very properly remarked, a republic is only proper for ſtates of ſmall extent. So much for the Grecian republics, Athens and Sparta.

The Conſtitution of Rome was different at different periods. It was at firſt a limited monarchy, with a Senate to aſſiſt or check its kings. Upon the expulſion of Tarquin, it became in a great meaſure ariſtocratical. But I ſhall here conſider the Conſtitution of this military republic, only from the firſt eſtabliſhment of the Tribunes of the people to the wars of Marius and Sylla. The *executive authority* was ſhared between the conſuls and the ſenate, and afterwards the prætors, &c.—The two former had originally all the

power of the ancient kings; only this was limited by being divided between them, and by the annual election of the conſuls. The Senate, which conſiſted of three hundred perſons, generally tranſacted all buſineſs with the ambaſſadors of other nations; and propoſed declarations of war and peace, which for a long time were only ratified by the people. *Laws were paſſed* by the *comitia curiata*, or inhabitants of the diſtricts of Rome; by the *comitia centuriata*, or aſſemblies of centuries, in which the richer inhabitants formed the majority; and by the *comitia tributa*, where the whole thirty five tribes, who had the privilege of voting, were the legiſlators. After the people had got the better of the Patricians, *they tried both public and private cauſes* in their aſſemblies; and by their decrees, called *plebiſcita*, made ordinances, which were binding on all ranks in the ſtate, altho' the Patricians could not attend theſe popular meetings. Thus, in the wantonneſs of their licentiouſneſs, like the common people of Athens, they aſſumed both *the legiſlative* and the judiciary powers. This laſt however was in general committed to the Equites or Knights, who were both the collectors of the revenue, and judges of civil queſtions. The prætor preſided in the tribunals, and appointed arbitri or judges, ſometimes centumviri, or courts compoſed of an hundred and five perſons, who were generally knights, and decided queſtions of law; and in criminal trials, he named the judices ſelecti, whoſe inſtitution probably gave riſe to our juries. Beſides theſe diſtributions of the proper judiciary powers, a kind of inquiſitorial authority was committed to two Cenſors, who were the general inſpectors of morals, and who at pleaſure removed the citizens of all conditions into lower, or raiſed them to higher ranks. And in caſes of very imminent danger, or particular emergency, the Romans created a Dictator, whoſe power was above the laws, and from whoſe judgement, till a late period, there lay no appeal. He named a maſter of horſe, who might be called the grand vizier, while the dictator himſelf was a deſpot, as long as his authority laſted.—The Conſtitution of Rome was admirably adapted for a republic, whoſe object was the enlargement of empire. The frequent changes of magiſtrates, while the nation

tion was brave and virtuous, and even the diſputes between the Patrician and Plebeian families, no doubt called forth great men. But the people were oppreſſed by being kept in perpetual wars, while the Roman laws againſt all debtors were remarkably ſevere, and every man of the military age was obliged to be a ſoldier. The aſſemblies of the people, after they aſſumed the whole legiſlative, and in many caſes alſo the ſupreme judiciary power, paſſed very improper laws, and very unjuſt ſentences. The tribunes of the people, like the Ephori of Sparta, and Coſini of Crete, were held to be inviolable: and poſſeſſed a power of putting a ſtop not only to the *legiſlation*, but likewiſe to the execution itſelf; which as Monteſquieu obſerves, and as any attentive reader of the Roman hiſtory muſt alſo remark, was attended with infinite miſchiefs. The great hiſtorian of Rome informs us that the tribunes carried this power ſo far, as to impriſon the conſuls, when they would not excuſe their friends in making levies of ſoldiers—and even their venerable cenſors, when they would not admit ſome of thoſe worthleſs men into the ſenate, or make them ſenators. Theſe diſputes often ran ſo high that the Conſuls were obliged to name a Dictator; who was alſo choſen when the Conſuls diſagreed, or when a dangerous war threatened the deſtruction of Rome. This was a clear proof of the imperfection of a divided executive government, even when the territories of the republic were of no great extent—But when the limits of the empire were enlarged, and the morals of the people were corrupted, a republican government became every day more unfit, both for the extent of territory, and the character of the Romans: And whether a Marius or a Sylla, a Pompey or a Cæſar, was at the head of the government, the people were equally deprived of their liberty, and the Roman Conſtitution was but a name. In general the principal imperfections of that Conſtitution may be thus ſummed up. The *legiſlative authority*, which ſhould have been *always divided*, was at firſt almoſt entirely engroſſed by the ſenate; and afterwards uſurped by the people, and their factious tribunes. The *executive power* of Rome wanted *unity*; which in times of danger often rendered a dictator neceſſary even in the pureſt ages,

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and, when the republic became corrupted, gave riſe to perpetual dictators, and at laſt to emperors. The *judiciary power*, when aſſumed by the aſſemblies of the people, was often abuſed by popular leaders; and in ordinary caſes was very improperly committed to the equites or knights, after this order of citizens became the collectors of the taxes. We would think it very hard in Great Britain, if every man was liable to be preſſed to go into the army, and to be ſent with our marching regiments to any part of the earth: And we would be filled with indignation if our exciſe officers, or farmers of ſome of our taxes, were to be both judges and juries, as well as proſecutors in the Court of Exchequer. Yet Rome in the height of her glory, was ſubject to both theſe hardſhips: And the laſt was ſo great a grievance that the illuſtrious Monteſquieu exclaims: "When the judiciary "power of Rome was transferred to the farmers of the reve-"nues, there was an end of virtue, policy, laws, magiſtracy "and magiſtrates." I think I need ſay nothing more to prove the ſuperiority of the Britiſh Conſtitution, when compared to that of Rome, excepting this, that with the Romans the luſt of ſovereign power, was greater than the love of liberty.

From conſidering the relative excellence of the Conſtitution of Great Britain, compared with that of the moſt celebrated nations of antiquity, I proceed to examine briefly the Conſtitutions of Venice, Holland, America and France, which are ſuppoſed to contain ſpecimens at leaſt of the different kinds of political governments in modern times. The two firſt of theſe are now at an end; and ſhall therefore be conſidered as conciſely as poſſible.

The Conſtitution of Venice was an ariſtocracy. The executive power was chiefly committed to the Doge and the Pregradi; the legiſlative power was veſted in the Council; and the judiciary in the Quarantia, in ordinary caſes. But in extraordinary ones, where Rome had her cenſor, and a dictator, Venice had her ſtate inquiſitor, who frequently ſuſtained both theſe characters. Here the enlightened Monteſquieu obſerves, "The great misfortune of the people of "Venice was, that all theſe different tribunals were compo-

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" ſed of magiſtrates belonging to the ſame body, which con-
" ſtituted almoſt one and the ſame power." For all the above courts were compoſed only of the nobility. Yet it muſt be acknowledged, that, though there was no liberty to the common people in the conſtitution of Venice, there is more wiſdom in an ariſtocracy than in a democracy; and that the Venetian republic could not probably have continued ſo long if its Conſtitution had been democratical.—This Conſtitution however is now at an end. An hundred and eighty years ago it was nearly overturned by the Spaniſh Ambaſſador. But when Jaffier, one of the principal conſpirators ſaw the public rejoicings, at which the Doge, as uſual, married the ſea, by throwing a ring into the Adriatic, St. Real informs us, that the tranquillity of the devoted Venetians inſpired him, Jaffier, with the keeneſt ſenſibility; and his conſcience was ſo awakened, that he revealed the conſpiracy, when on the eve of being accompliſhed. The French Directory have had no ſuch ſenſibility, or compunction; but notwithſtanding all the promiſes made of reſtoring liberty to the Venetians, and knocking off the chains of the common people, have aſſigned Venice as a province to the Emperor of Germany, after having ſtript it of its wealth, and plundered its arſenal. Its Conſtitution however was never comparable to that of Britain; but I ſelected it as the wiſeſt modern ariſtocracy.

The Conſtitution of the ſeven united Provinces, of which Holland was the chief, may claim a few ſentences, from their former connexion with this country. It was a federal republic, in which the executive government was chiefly entruſted to a Stadtholder. It certainly was a great defect in this confederacy, that the different provinces, though of very unequal riches and extent, had equal votes in the ſtates general, and that the deputies repreſented a body of people, and were not as in Britain choſen by particular electors, and when elected, repreſentatives of the whole nation. The provinces alſo did not contribute to the expences of the ſtate, according to the proportion of ſuffrages, but each province had one vote. The judges and magiſtrates were not choſen by the ſtates general, or by the ſtates of the provinces. And

Monteſquieu

Monteſquieu has on many accounts preferred the Conſtitution of the republic of Lycia, in which the votes were in proportion to the ſize of the towns, the taxes in proportion to the ſuffrage, and where the judges and town magiſtrates were elected by the common council of the republic, to the confederate government which lately ſubſiſted in the united provinces. The power of the Stadtholder in theſe ſtates was indirectly too great, as he could often influence the election of the ſtates general, whom he acknowledged to be his ſovereigns. But his direct and conſtitutional power was too limited, as he had only a ſingle vote when he took his ſeat in the national aſſembly; conſequently the executive power of that republic could not conſtitutionally defend itſelf againſt the encroachments of the legiſlative; which in fact did often encroach upon the powers committed to the ſupreme magiſtrate. Yet the office of Stadtholder, when a great Prince filled it a century ago, was in many reſpects more formidable, than the royal prerogatives of a King of Great Britain: And William III. was ſaid to be King of Holland, and only Stadtholder of England. This office of Stadtholder was particularly obnoxious to a number of the inhabitants, who did not conſider what the late Lord Littleton obſerved concerning it, That it was a ſpring in the Conſtitution of this republic, which the founders of that Conſtitution had wiſely deviſed, for quickening the ſlow motions of the different ſtates of the confederacy. The people of that country have now aboliſhed the office of ſtadtholder, and have eſtabliſhed a new ſyſtem in imitation of the French Conſtitution. They will probably find themſelves in a condition ſimilar to that of the frogs in the fable. who petitioned Jupiter to give them a King, and who inſulted the *log* that was thrown down among them, requeſting a more active ſovereign, till Jupiter ſent them a ſerpent, who bit and devoured them. Whatever Conſtitution they formerly had or may obtain, they never had, and from their virtual ſubjection to France, they can now have no hope of obtaining, a form of government comparable to the Britiſh Conſtitution.

The Conſtitution of the united ſtates of America is evidently framed after the model of that of Great Britain. Only the

the Americans, in this reſpect much wiſer than the French, have made their government a federal one, becauſe their country is by far too extenſive for a republic which is not confederate. They have alſo wiſely made the office of Preſident, and thoſe of the Senate, to endure for a much longer term of years than they have preſcribed for the duration of the houſe of repreſentatives. But though in both theſe caſes they have acted upon principles ſimilar to thoſe of the Britiſh Conſtitution, not thoſe of the French ſyſtem-builders, the defects of the American Conſtitution, compared with that of this country appear to me to be the following.—The Preſident's office ſhould be for life, or for a much longer term than it is at preſent. The office of Senators ſhould certainly be for life, and they ſhould have no ſalaries, but be independent of popular opinion, and of all emoluments due to them as ſenators; becauſe they ought to be wiſe men, who would oppoſe the prejudices or caprices of the multitude, while the houſe of repreſentatives ought on the other hand to ſpeak the ſentiments of the people. Univerſal ſuffrage, alſo, in the choice of repreſentatives, cannot long anſwer in America, though at preſent it may be proper. When the country of America becomes more cloſely inhabited, and when a greater inequality in the fortunes of the inhabitants is introduced by commerce and by luxury, theſe defects will be ſtill greater, and will poſſibly be remedied. At preſent the American Conſtitution is no doubt inferior to the Britiſh, and certainly is relatively imperfect, and improper for Britain to adopt.——The different Conſtitutions of France, eſtabliſhed ſince the late Revolution in that country, yet remain to be conſidered, and to be compared with our own excellent Conſtitution.

The firſt Conſtitution, eſtabliſhed by the national, or as it was afterwards called, the Conſtituent Aſſembly, committed the executive government chiefly to the King, with a limitation as to the appointment of the greater proportion of officers in the army and navy; and devolved the legiſlative authority, almoſt entirely, on what was called the legiſlative body. The King was only allowed a ſuſpenſive veto, and his exerciſing even this laid the foundation of all his misfortunes,

tunes. The French nation had ſuffered ſo much from the arbitrary power of their former monarchs, though their late unfortunate King had not ſtretched his authority ſo far perhaps as he ought to have done, that they abridged the King's authority, more than the general good of the nation required them to do. They had endured far greater evils from the various privileges of their numerous tribe of nobility, who poſſeſſed great eſtates, but paid no land tax in France (while, unlike thoſe of Britain, their younger ſons were noble, and their whole nobleſſe a diſtinct claſs from the reſt of their country) that in an unhappy moment, and it is ſaid without any previous deſign, they abrogated all orders of nobility, and all diſtinctions of honour—They did wrong both in weakening their King too much, and in deſtroying the tribe of nobleſſe without eſtabliſhing a Senate. They did not conſider that the executive power ſhould be checked, but not limited in its faculty of executing, and that their illuſtrious countryman told them long ago, "the fundamental maxim of a monar-"chy is, *no nobility, no king.*" They did not attend to the volatile character of the French nation, nor to the rational liberty of every free government, which certainly requires there ſhould be a ſenate to moderate the heat of the repreſentatives of the people: And they made an ill-digeſted Conſtitution, which they wiſhed to continue unaltered for thirty years, but which could not have endured nearly that time, without great alterations. That Conſtitution, which from the limitations of the King's prerogative, and from the total want of a ſenate, had no balance or check within itſelf, nor any proper diſtribution of the different branches of political authority, was ſoon overturned; and the King, whoſe perſon was declared inviolable, was murdered under the forms of law by the national convention—A new Conſtitution was propoſed upon the republican model, but was ſuſpended by that monſter called a *revolutionary government;* and ſoon after the death of Robeſpierre, the preſent republican Conſtitution was eſtabliſhed.—Of this I am now to ſpeak.

In one reſpect this Conſtitution is much ſuperior to the firſt one, which had ſo many admirers in this country. It has

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an executive power, a Senate, and a Houſe of Repreſentatives. But in every reſpect it is far inferior to our own excellent Conſtitution. The executive power of France is divided among five perſons, called the Directory, inſtead of being committed to one; the Senate, or council of ancients, is filled up out of the number of the repreſentatives of the people; and even the five members of the directory are virtually choſen out of this legiſlative body. The Senate, or council of antients, has indeed a nominal power of chooſing them from a liſt preſented by the Council of five hundred: But the latter has already learned to put none but weak men in their liſt, except the five perſons meant to be directors; ſo that the ſenate muſt approve of thoſe who are intended to be choſen by the other Houſe. All theſe conſtituted authorities are therefore liable to the ſame objection, which I quoted from Monteſquieu, reſpecting the republic of Venice; viz. being choſen at the ſame time with the legiſlative body, they in fact belong to the ſame body, and cannot be proper checks to each other. They are alſo liable to other objections.—The diviſion of the executive power muſt be attended with the worſt conſequences. As an ingenious author, who wrote on the principles of the Britiſh Conſtitution about eight years ago, remarks, "the diviſion of the executive power ne-"ceſſarily introduces actual oppoſitions, even violent ones, "between the parts into which it has been divided; and that "part, which in the iſſue ſucceeds ſo far as to abſorb and "unite in itſelf all the others, immediately ſets itſelf above "the laws." This actually happened in France a few months ago, when Barras, and his aſſociates in the directory, not only over-ruled the other two directors, Barthelemy and Carnot, but reſolved to ſend them into baniſhment. De Lolme's obſervation on this ſubject has alſo been verified, viz. "that "the executive power is more eaſily confined when undi-"vided." For the majority of the directors, after baniſhing Barthelemy (Carnot's fate being unknown), went to the legiſlative bodies, demanded all the obnoxious members, who oppoſed their ambitious plans, and without the ſhadow

of proof, or the leaſt form of trial, have ſent them along with Barthelemy to Cayenne. In Britain, where party diſputes run very high, about 15 years ago, and where the King can always ſettle ſuch diſputes, by changing his miniſters, the ſeals were demanded from Lord North and Mr Fox at midnight, which perhaps diſturbed the reſt of the two ex-miniſters, if they were not before apprized of their danger. But this was all the diſturbance that was given to the leaders of the coalition, who if they had been in France, muſt have periſhed with Briſſot, and the Girondiſts, on the ſcaffold, or would have been very fortunate if they had been baniſhed with Barthelemy and Pichegru. In ſhort the executive power of France wants unity, the council of antients wants independence, and the council of five hundred, which could have reſiſted *one King*, is too weak to reſiſt *five* or even *three directors*. As to the *judiciary power* of France, ſince the revolution in that country, it has been ſuch as would have diſgraced the moſt barbarous nation upon earth. Yet the humane and enlightened Monteſquieu, who was not only the ornament of France, but the moſt penetrating genius of modern times, told them long ago, that "the liberty of the ſubject principally depended on the "goodneſs of the criminal laws; nay, that the knowledge of "the beſt rules, to be obſerved in criminal judgements, *is* "*more intereſting to mankind, than any other thing in the uni-*"*verſe.*"—I think I need not quote a ſtronger evidence of the imperfection of the different French Conſtitutions, whether its crippled monarchy, or its ambitious republic, compared to the excellent Conſtitution of Great Britain. I ſhall only add, concerning the preſent Conſtitution of France, and the ſpirit of its leading men, that they ſeem to be much more adapted for extending their territories, than for eſtabliſhing the liberties of the people, and that the more they extend the limits of France, the more unfit they render it for a republican government, eſpecially for a republic that is not confederate, but which is declared to be for ever one and indiviſible.*

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* Note.—Some time after the above diſſertation was compoſed and publicly delivered, another revolution took place in France; and in that

" A very curious ſpectacle," ſays Monteſquieu, " it was, " in the laſt century, to behold the impotent efforts the En- " gliſh made for the eſtabliſhment of democracy. As thoſe " who

volatile nation a new Conſtitution followed that event, juſt as a farce is acted at the concluſion of a play, to amuſe the audience. The author of this diſſertation has drawn up a particular examination of this new Conſtitution; but he has hitherto deferred the publication of it, leſt the work of Sieyes and Bonaparte ſhould be deſtroyed before his commentary could be printed. Before he reſolve upon publiſhing this particular examination, he ſubjoins the following general ſtrictures on the new French Conſtitution.

It was framed by uſurpers, and is founded on diſtruſt. It may admit of a doubt, whether Bonaparte and Sieyes had any confidence in each other. It is beyond diſpute that they have no confidence in the French nation. Bonaparte is the Grand Seignior, with the name of Chief Conſul; and Sieyes is the Mufti, of the nominal republic. The people, while they ſeem to be every thing, have in reality no power in the government.—The indiviſible republic is frettered down into as many diſtricts as there are communes in France; for no French citizen can enjoy any political authority for the ſpace of a year after he removes from one commune to another. The empty name of French Citizen is denied to all perſons who were not born in the republic; and this title is forfeited by a Frenchman's accepting any hereditary diſtinction from a foreign nation, though in alliance with France. Alſo the exerciſe of a Frenchman's civil rights is ſuſpended in ſuch a variety of caſes, that it is evident that the framers of this Conſtitution are ignorant of the firſt principles of liberty, or had reſolved that the French nation ſhould enjoy as little liberty as poſſible. After the number of citizens who can aſſemble and vote in the communes is limited by various illiberal articles, the people by a ſeries of decimations are made the inſtruments of forging their own chains. For they can only elect national eligibles, not repreſentatives. The Conſervatory Senate (the exiſtence of which is a libel on the French nation), have the power of compoſing the national liſts, of annulling the elections of any department, and of chooſing, from a numerous liſt ſo compoſed and corrected by themſelves, the great public functionaries of the nominal republic. The tribunes of the people are picked and culled by the ſenate. Theſe tribunes can only *ſpeak*, or *debate*. They can neither initiate, amend, nor reject a law, that is propoſed by the government—not even a money bill. The legiſlative body, alſo choſen by the conſervatory ſenate, cannot ſpeak or deliberate, they can only vote by ballot or private ſcrutiny; conſequently the people can neither know the merits nor demerits of the individual legiſlators. The firſt Conſul, Bonaparte, who has uſurped that office for ten years, is really the ſovereign, and poſſeſſes greater prerogatives than any King of France poſſeſſed before the reign of Louis XI. or perhaps till after the ſtates general ceaſed to meet in the reign of Louis XIII. The two inferior Conſuls are only his viziers—though no-

" who had a ſhare in the direction of public affairs were " void of all virtue, as their ambition was enflamed by the " ſucceſs of the moſt daring of their members, as the ſpirit " of a faction was ſuppreſſed only by that of a ſucceeding " faction, the government was continually changing, the " people amazed at ſo many revolutions ſought every where " for a democracy without being able to find it. At length, " after a ſeries of tumultuary motions and violent ſhocks, " they were obliged to have recourſe to that very govern- " ment, which they had ſo odiouſly preſcribed."

Whe-

minally his colleagues. The allowing the government the ſole power of initiating or propoſing laws, and alſo of withdrawing them, when they chooſe, is equally deſtructive of national liberty and of ſound legiſlation. The judges, though originally choſen by the firſt Conſul, are removed from their offices, whenever they ceaſe to be inrolled in the different national liſts; but juſtice will never be properly adminiſtered while the judges are dependant. Indeed the tribunals of France, ſince their revolution commenced, have been a diſgrace to human nature, and this Conſtitution is not calculated to make them reſpectable. As there is no liberal confidence in this government, the reſponſibility of public functionaries is but a name. For there is no proviſion made for puniſhing the perſonal crimes of *the three* Conſuls; the counſellors of ſtate are not reſponſible for giving bad advice. And no miniſter can be tried till this council give him up for that purpoſe—nor can the inferior agents of the government be proſecuted for the public crimes, which they committed under the ſanction of miniſters. The rights of men are now forgotten in France, and only a few imperfect articles reſpecting perſonal liberty are found in this Conſtitution. But the rewards of valour, in this military government, are particularly attended to; and ſhow, that Bonaparte is very anxious to ſecure the fidelity of the Janiſſaries, by whoſe aid he accompliſhed the revolution; while all future exemptions of emigrants are interdicted; and all property, however acquired, is ſecured to the preſent poſſeſſors. This Conſtitution, by a ſolemn mockery, was *offered* to the people; but only 12 days elapſed from the time that it was decreed till the public functionaries, as they are called, uſurped the offices in the adminiſtration. It eſtabliſhes a military government, or a firſt Conſul ſupported by an army; and with the forms of an ariſtocracy, and an aſſumed air of moderation in Bonaparte, is really a monarchy, governed not by fundamental laws, but by prætorian guards, or French Janiſſaries.

The Britiſh Conſtitution needs not ſuch a foil to ſet off its charms.—But the friends of liberty and equality in Great Britain will receive ſome inſtruction, when they ſee the ariſtocracy of Venice, after ſeveral revolutions, tranſported to Paris, and a Corſican Adventurer, who had been defeated before Acre, occupying the palace of the Capets.

Whether this ſhall alſo be the fate of the French Revolution; whether that nation ſhall go on extending their empire, and overturning the Conſtitutions of the other governments of Europe; whether they ſhall after all their victories experience all the calamities of war; or whether, like an individual, after making too great exertions, they ſhall feel univerſal laſſitude, and indulge themſelves in eaſe and reſt, to repair the damages done to the body; time alone can diſcover. But the French nation, in this century, hath exhibited the ſame curious ſpectacle to Europe, which the Engliſh did in the laſt one. The ſame want of virtue has appeared in all the leaders of their different factions; their ambition has alſo been inflamed by the ſucceſs of Robeſpierre, the Cromwell of France, though he died a violent death, after ſome years of tyranny; the ſpirit of the faction of Mirabeau was only ſuppreſſed by the ſucceeding factions of Petion, Robeſpierre, Tallien, Carnot, and now Barras and his brethren directors; the form of government has been continually changing—limited monarchy, proviſional democracy, revolutionary government, and their preſent republic one and indiviſible: the French people themſelves are amazed at ſo many revolutions, and have ſought for liberty and equality every where without being able to find them.—Their motions have already been more tumultuary, and their ſhocks more violent than thoſe of the Engliſh, whoſe operations were more confined by their ſurrounding ocean, though in their revolutionary paroxiſms they made ſeveral of the nations of Europe, France particularly, feel their power. If the other nations of Europe had left the French to themſelves, they probably would before this time have had recourſe to that form of government which they had ſo odiouſly preſcribed. But whatever laurels they may gain, theſe will not repair the loſſes which France has ſuſtained by war, by proſcriptions, and by the diſregard of all thoſe principles which alone can render them free, virtuous, and happy: And whatever Conſtitution they may adopt, and however much the extenſion of their empire may be injurious to their own liberty, none of the forms of government which they have as yet either propoſed or eſtabliſhed, will bear

bear to be compared with the Britiſh Conſtitution, the relative excellence of which is ſo very evident; and the great leſſons that we have to learn from the conduct of France, are, cautiouſly and gradually to correct any abuſes, which have been occaſioned by time; and while we venerate our excellent Conſtitution, to beware leſt this become too good for us, by our loſing ſight of thoſe virtues that fit us for enjoying liberty.

On a general review of the Conſtitutions of the moſt celebrated governments of antient and modern times, I think it clearly appears, that the democracy of Athens, in which the mob or their leaders ruled that ingenious people—the ariſtocracy of Sparta, in which the King, Senate and Ephori, gave to the Lacedemonians almoſt no authority, (though a few manly virtues and ferocious vices prolonged the exiſtence of the republic)—the mixed government of Rome, where the haughty patricians and ambitious plebeians, or their factious tribunes, uſurped the adminiſtration by turns, agreeing only in one point, a deſire to extend the limits of their empire—the wiſe ariſtocracy of Venice, which preſerved a ſmall territory for many centuries, though all the branches of political authority were grafted upon the ſtock of their nobility—the confederate republic of the ſeven united provinces, which was not cemented by principles of political wiſdom, that could render the union ſtrong and laſting, and could only be held together by that very office of ſtadtholder, which a number of the Dutch conſidered as a badge of ſlavery—the Conſtitution of the united ſtates of America, where the Preſident and Senate are as yet too dependent on the people—and the late crippled monarchy, and preſent ambitious republic of France (not to ſpeak of its monſtrous revolutionary government),—*are all far inferior to our own excellent Conſtitution*, whoſe relative excellence appears to the greateſt advantage, upon being compared with the moſt celebrated governments of antient and modern times.

I have now endeavoured to ſhew the excellence of the Britiſh Conſtitution, both abſolutely, when viewed by itſelf, and relatively, when compared to the Conſtitutions of other nations.

nations. In viewing it abſolutely, I have conſidered the different conſtituted authorities, with the powers given to each of theſe, and the checks which the Conſtitution has eſtabliſhed againſt the abuſe of theſe powers; and have ſhewn that the diſtinguiſhing features of the Britiſh Conſtitution, viewed in this light, are, a ſeries of truſts corrected by a ſeries of checks. I have alſo conſidered the different branches of political authority, as wiſely diſtributed among the different perſons; the diviſion of the legiſlative producing energy, wiſdom, and liberty; the committing the whole executive power undivided, promoting unity, ſecrecy, and expedition; and the diſtribution of the judiciary power, eſtabliſhing law, juſtice, and mercy—And farther, though in looking at excellence, we are to look rather at its nature, than to its effects, yet we ſee, that wiſe laws, national wealth, general happineſs, energy of character, and rational liberty, are the effects of our Conſtitution, where the forms of law are the keyſtones of juſtice, and the higheſt in the arch of liberty. I hope that this diſquiſition, though imperfect and ſometimes minute, will be a more ſatisfactory proof of the abſolute excellence of the Britiſh Conſtitution, than if I had pronounced an eulogy or panegyric in the moſt animated figures, or glowing language. For the excellent qualities of our Conſtitution are better deſcribed by an unadorned explanation, than by a laboured panegyric. Like the exploits of a Britiſh hero, celebrated by the chaſte muſe of *Addiſon*,

> " Great in themſelves their genuine charms they boaſt;
> " And thoſe, who paint them trueſt, praiſe them moſt.

In ſhewing the *comparative* excellence of the Engliſh Conſtitution, I could not avoid explaining the outlines, while I ſhewed the defects of the conſtitutions of other nations: Yet I venerate the humane Solon, the ſevere Lycurgus, Cato, and all the patriots of Rome; I lament the fate of Venice, and of the Seven united Provinces; I revere the virtues of Waſhington; and I acknowledge the bravery of the French nation, and their former politeneſs of manners, (which ſupplied the place of humanity, and which has been ill exchanged for their republican ſeverity), though I find fault with their crippled monarchy, abhor their revolutionary government,

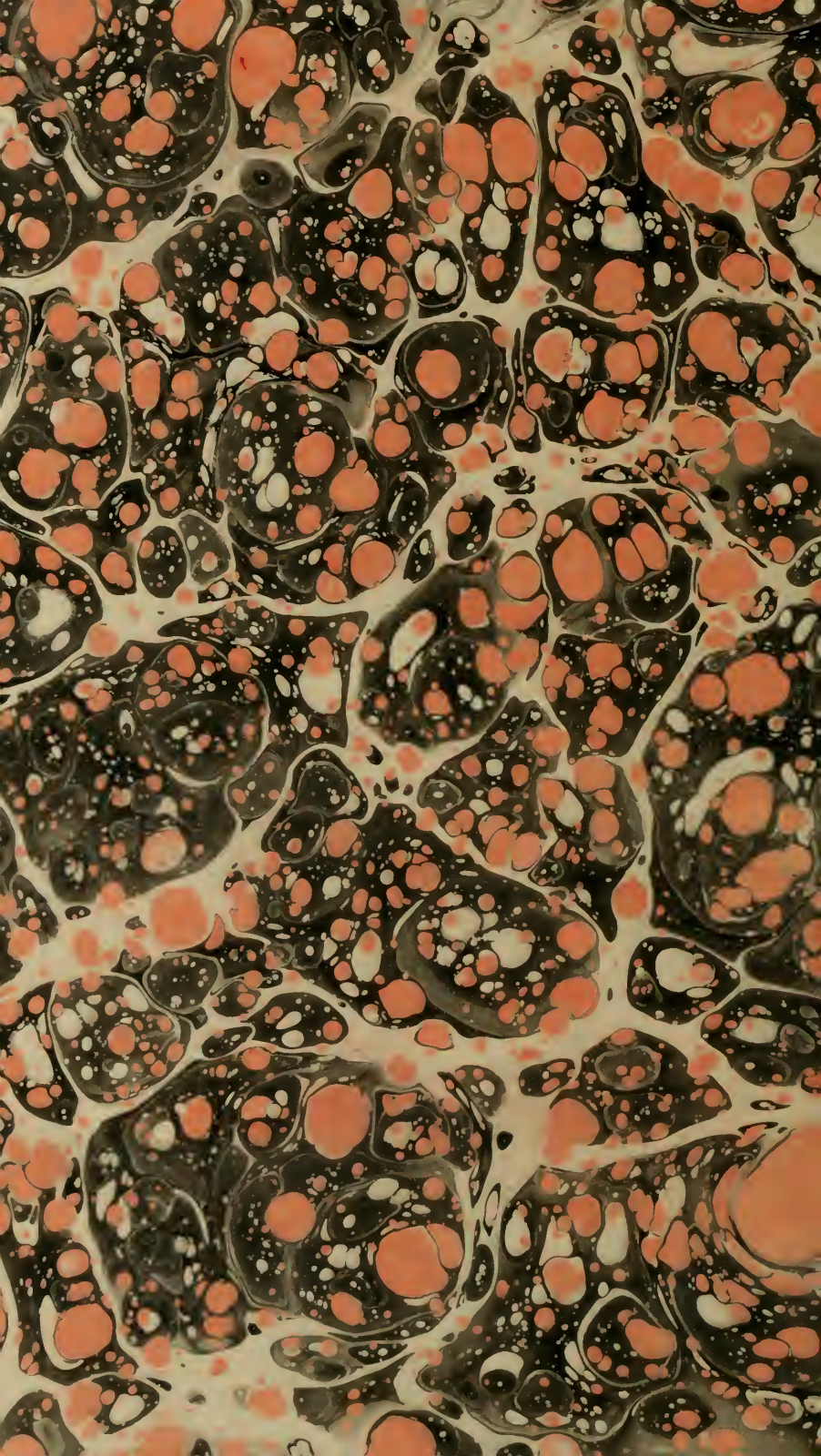
and

and have explained the defects of their present republican constitution. But I prefer, far above all the governments of ancient and modern times, the political Constitution of Great Britain; and I think I have shewn that this is not only absolutely good, when viewed by itself, but relatively excellent, when compared to the Constitutions of all the free governments of the most celebrated nations, that have been or are now existing upon the earth.

This excellent Constitution is at present exposed to great danger from the *ambition*, may I not add, from the envy, of France. I trust in providence that it shall resist the attacks of that powerful, ambitious, and, from many causes, inveterately hostile nation. But events are not in the power of man: And our Constitution may be overturned, though it cannot be equalled, far less excelled. Our enemies are as yet making only their third or fourth experiment on liberty—We have been making many experiments in the course of at least thirteen hundred years. Should our venerable Constitution perish, by the violence of the French, or by the vices of Britons, the last of its surviving patriots may apply to this excellent form of Government, with the alteration of a few words, what *Bishop Atterbury* proposed for the epitaph of *John Dryden:*

CONSTITUTIONI BRITANNICÆ,
CUI LIBERTAS HUMANA
VIM SUAM ATQUE VENERES DEBET,
ET, SI QUA IN POSTERUM PROGREDIETUR,
EST ADHUC DEBITURA.

To the Constitution of Great Britain,
To which the liberty of mankind
Owes its vigour and its charms,
And, if it shall afterwards make any advances,
Is still further to be indebted.

THE END.

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